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FCC Record

A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

Reed E. Hundt, Chairman
James H. Quello
Andrew C. Barrett
*Susan Ness
**Rachelle B. Chong

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*Commissioner Ness sworn in on June 3, 1994.
**Commissioner Chong sworn in on June 6, 1994.

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Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-231

In the Matters of

Imposition of Forfeiture Against

CAPITOL RADIOTELEPHONE INC.
d/b/a Capitol Paging
1420 Kanawha Blvd. E
Charleston, West Virginia 25301

Former Licensee of Station WNSX-646 in
the Private Land Mobile Radio Services

and

Revocation of License of

CAPITOL RADIO TELEPHONE INC.
d/b/a Capitol Paging
1420 Kanawha Blvd. E
Charleston, West Virginia 25301

Licensee of Station WNDA-400 in the
Private Land Mobile Radio Services

and

Revocation of License of

CAPITOL RADIO TELEPHONE INC.
d/b/a Capitol Paging
1420 Kanawha Blvd. E
Charleston, West Virginia 25301

Licensee of Station WNWW-636 in the
Private Land Mobile Radio Services

and

Revocation of License of

CAPITOL RADIOTELEPHONE COMPANY, INC.
1420 Kanawha Boulevard East
Charleston, West Virginia 25301

Licensee of Station KWU-373 in the
Public Mobile Radio Service

and

Revocation of License of

CAPITOL RADIOTELEPHONE COMPANY, INC.
P.O. Box 8305
South Charleston, West Virginia 25303

Licensee of Station KUS-223 in the
Public Mobile Radio Service

and

Revocation of License of

CAPITOL RADIOTELEPHONE CO., INC.
1420 Kanawha Boulevard East
Charleston, West Virginia 25301

Licensee of Station KQD-614 in the
Public Mobile Radio Service

and

Revocation of License of

CAPITOL RADIOTELEPHONE COMPANY, INC.
1420 Kanawha Boulevard
East Charleston, West Virginia 25301

Licensee of Station KWU-204 in the
Public Mobile Radio Service

Appearances

Kenneth E. Hardman, on behalf of Capitol Radiotelephone Company, Inc.; *Frederick M. Joyce* and *Christine McLaughlin*, on behalf of Ram Technologies, Inc.; and *Ralph A. Haller, Charles E. Dziedzic, Y. Paulette Laden* and *Carol Fox Foelak*, on behalf of the Private Radio Bureau.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOSEPH CHACHKIN

Issued: October 21, 1994; Released: October 31, 1994

PRELIMINARY STATEMENT

1. Capitol[1] is the licensee of the above captioned public mobile radio service stations and was the licensee or applicant for private carrier paging (PCP) station WNSX-646 and associated private land mobile stations WNDA-400 and

[1] The above-captioned corporate licenses are collectively referred to as "Capitol"

WNWW-636.[2] The *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, (HDO)*, 8 FCC Rcd 6300 (1993), specified the following issues:

(a) Whether, during the month of October 1990, from November 15, 1990 through November 18, 1990, on March 4, 1991, on March 19, 1991, and/or from July 17, 1991 through July 19, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc., d/b/a Capitol Paging, Capitol Radiotelephone Company, Inc., and Capitol Radiotelephone Co., Inc. willfully, maliciously and/or repeatedly caused private land mobile radio station WNSX-646 to transmit in a manner that caused harmful interference, in violation of Section 90.403(e) of the Commission's Rules, 476 C.F.R. §90.403(e), and/or in violation of Section 333 of the Communications Act of 1934, as amended, 47 U.S.C. §333.

(b) Whether, on August 12, 13, 14, and 15, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d/b/a Capitol Paging, Capitol Radiotelephone Company, Inc., and Capitol Radiotelephone Co., Inc. willfully, maliciously and/or repeatedly caused private land mobile radio station WNSX-646 to transmit in a manner that caused harmful interference, in violation of Section 90.403(e) of the Commission's Rules, 47 C.F.R. §90.403(e), and/or in violation of Section 333 of the Communications Act of 1934, as amended, 47 U.S.C. §333.

(c) Whether, from November 15, 1990 through November 18, 1990, on March 4, 1991, and/or from July 17, 1991 through July 19, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Telephone Inc. d/b/a Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc., willfully and/or repeatedly caused private land mobile radio station WNSX-646 to transmit communications for testing purposes in a manner such that the tests were not kept to a minimum and every measure was not taken to avoid harmful interference, in violation of Section 90.405(a)(3) of the Commission's Rules, 47 C.F.R. §90.405(a)(3).

(d) Whether, on August 12, 13, 14, and/or 15, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d/b/a Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. willfully and/or repeatedly caused private land mobile radio station WNSX-646 to transmit communications for testing purposes in a manner such that the tests were not kept to a minimum and every measure was not taken to avoid harmful interference, in violation of Section 90.405(a)(3) of the Commission's Rules, 47 C.F.R §90.405(a)(3).

(e) Whether, on August 12, 13, 14, and/or 15, 1991, in light of the evidence adduced, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d/b/a Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. willfully and/or repeatedly caused private land mobile radio station WNSX-646 to identify its transmissions by Morse code at a rate less than 20-25 words per minute, in violation of Section 90.425(b)(2) of the Commission's Rules, 47 C.F.R. §90.425(b)(2).

(f) Whether from November 15, 1990 through November 18, 1990 Capitol Radiotelephone Inc, Capitol Radio Telephone Inc. d/b/a Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. caused private land mobile radio station WNSX-646 to willfully and/or repeatedly transmit on the frequency 152.480 MHz for purposes other than completing private carrier pages, in violation of Sections 90.173(b) and 90.403(c) of the Commission's Rules, 47 C.F.R. §§90.173(b) and 90.403(c). Further, whether the content of these transmissions included common carrier paging traffic in violation of Section 90.415(b) of the Commission's Rules, 47 C.F.R. §90.415(b).

(g) Whether, beginning on or about August 27, 1992 and continuing to the present, Capitol Radiotelephone Inc., Capitol Radio Telephone Inc. d/b/a Capitol Paging, Capitol Radiotelephone Company Inc., and Capitol Radiotelephone Co., Inc. caused private land mobile radio station WNSX-646 to willfully and/or repeatedly transmit on the frequency 152.480 MHz for purposes other than completing private carrier pages, in violation of Sections 90.173(b) and 90.403(c) of the Commission's Rules, 47 C.F.R. §§ 90.173(b) and 90.403(c). Further, whether the content of these transmissions included common carrier paging traffic in violation of Section 90.415(b) of the Commission's Rules, 47 C.F.R. §90.415(b).

(h) Whether in written and/or oral statements to the Commission or its staff with respect to the above matters, Capitol Radiotelephone Inc., Capitol Radio Telephone, Inc., Capitol Radiotelephone Company (Co.) Inc., and/or any of these entities doing business as Capitol Paging misrepresented facts to the Commission and/or was lacking in candor.

(i) Whether, in light of the findings under paragraph (h), any of the above captioned applicants/licensees willfully or repeatedly violated Section 1.17 of the Commission's Rules, 47 C.F.R. §1.17.

(j) In light of the findings under paragraphs (a) through (i), whether Capitol Radiotelephone Inc., Capitol Radio Telephone Inc., Capitol Radiotelephone Company (Co.), Inc., and/or any of these entities doing business as Capitol Paging have the requisite basic character qualifications to continue to remain Commission licensees.

[2] Capitol's license for PCP station WNSX-646 was granted on September 12, 1990. The grant was subsequently set aside and the application returned to pending status. Capitol's request to dismiss the application was granted by *Memorandum Opinion and Order*, FCC 93M-763, released Dec. 22, 1993. WNDA-400 and WNWW-636 are licenses for a frequency used as a link between the PCP station's transmitter sites in Charleston and Huntington (Cap. Ex. 15, pp. 4-6; Tr. 1029-1031). The licenses cancelled automatically pursuant to Section 90.157(a) of the Rules upon dismissal of Capitol's application.

(k) In light of the findings under paragraphs (a) through (j), whether Capitol Radiotelephone Inc., Capitol Radio Telephone Inc., Capitol Radiotelephone Company (Co.), Inc., and/or any of these entities doing business as Capitol Paging are qualified to retain each of their respective licenses set forth in the caption of this proceeding.

(l) In light of the findings under paragraphs (a) through (k), whether any or all of the capitol radio station licenses should be revoked.

(m) In light of the findings under paragraphs (a) through (l), whether Capitol Radiotelephone Inc. d/b/a Capitol Paging filed an application for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia (File No. 0190207) primarily for the purpose of obtaining a license in order to cause harmful interference to station WNJN-621 licensed to RAM Technologies Inc.

(n) In light of the findings under paragraphs (a) through (M), whether the application of Capitol Radiotelephone Inc. d/b/a Capitol Paging for a private carrier paging facility on the frequency 152.480 MHz in Huntington/Charleston, West Virginia (File No. 0190207) should be granted.[3]

2. The Private Radio Bureau (PRB) and Ram Technologies, Inc. (RAM) were named parties to this proceeding. The HDO placed the burden of proceeding and the burden of proof on the PRB with respect to all the issues except for the now deleted issue n.

3. The prehearing conference was held on October 29, 1993, and the hearing was held on February 1, 2, 3, 4, 7, 8 and 9, 1994. The record was closed at the conclusion of the hearing on February 9. *Order*, FCC 94M-68, released Feb. 14, 1994. Proposed findings and conclusions were filed April 8, 1994 and Replies were filed May 6, 1994.

FINDINGS

4. Capitol is a radio common carrier providing common carrier paging and mobile radio services under various licenses issued under Part 22 of FCC rules. (CAP-01 at p. 1). These licenses authorize the provision of mobile radio service predominately in the area around Charleston, West Virginia, as well as radio paging services throughout much of the state of West Virginia and into a portion of Ohio. (*Id.*). Capitol has been an FCC licensee for 30 years, and it is also certificated and regulated by the West Virginia Public Service Commission. (*Id.*).

5. By far the biggest component of Capitol's business is its common carrier paging business, with approximately 2,900 customers and 10,000 units in service. (CAP-01 at p. 2; Raymond Tr. 831). Capitol also has provided telephone answering service in Charleston since the early 1950s; and it also provides a variety of ancillary services such as facsimile transmissions and mail drops. (CAP-01 at p. 2; Raymond Tr. 1401).

6. Capitol's entry into the PCP business initially was the idea of J. Michael Raymond, Capitol's Vice President - Chief Operating Officer. (CAP-01 at pp. 1-2).. Capitol's motive in doing so was to supplement its existing paging services with a lower-cost paging service. (CAP-01 at p. 2).

7. Establishing a separate PCP for this purpose was preferable to the alternatives for a variety of regulatory, technical and cost reasons (CAP-01 at pp. 2-5). The frequency 152.48 MHz was chosen because it was the only VHF PCP frequency on which high-powered paging transmitters were allowed and it offered the possibility of networking. (*Id.*). Capitol's analysis and strategy decisions in this regard were typical of many other RCCs in the industry. (CAP-23 at pp. 5-8; Peters Tr. 1214).

8. According to Capitol's expert witness, Arthur K. Peters,[4] existing RCC operators, such as Capitol, use PCPs as a means to provide low cost paging alternatives. Typically, in starting a PCP operation, RCCs use surplus equipment or equipment which can be obtained inexpensively. Once the subscriber load has built sufficiently, new or better equipment can be deployed. PCPs enjoy an obvious regulatory advantage over RCCs. Peters pointed out that for a RCC operator in a regulated state such as West Virginia to change its rates, it may have to subject itself to a full rate hearing. On the other hand, in general, PCPs enjoy unrestricted movement with respect to prices, transmitter locations and state regulatory agencies. (CAP-25 at pp. 6-8).

9. The only major difference between PCP and RCC systems is the requirement that PCP operations share their channels with each other. An RCC operation has a guaranteed service area which is protected from interference by federal regulation. However, while a PCP operator must share a channel, there is very little federal definition concerning the method or mechanism by which a channel is shared. Channel sharing by its very nature reduces the amount of channel time available to the sharing entities and thus potentially caps income in addition to degrading service. As noted by Peters, for operators who had a large number of subscribers on a channel, it is also inevitable that they do whatever is necessary or whatever they can to protect their business interests. (CAP-25 at pp. 6-7).

10. At the time Capitol filed its PCP application, RAM was a PCP licensee on 152.48 MHz at various locations in Kentucky, Ohio and West Virginia under the call sign WNJN621, including Charleston, West Virginia and the Ashland, Kentucky/Huntington, West Virginia area. (CAP-18 at p. 3; CAP-20 at pp. 2, 12-15). RAM started its PCP business in early 1989. (Moyer Tr. 87). Its PCP business was highly successful. RAM claims to have had 5,578 paging units as of February 1990. (Tr. 870; CAP - 2 at p. 28). As reflected in its actions discussed, *below*, RAM was determined not to share the channel with Capitol or other competitors, notwithstanding it was required by law to do so.

---

[3] Issue (n) was deleted in light of the dismissal of Capitol's application. *Memorandum Opinion and Order*, FCC 93M-763, released Dec. 22, 1993.

[4] Peters has been engaged in the communications and broadcast industries since 1956. After serving as a consultant with Hammett and Edison, he formed his own consulting firm in 1970 and represents numerous RCC and PCP paging clients. Peters' is a full member of the Association of Federal Communications Consulting Engineers (AFCCE) and the IEEE and is registered Professional Engineer. CAP-25 at p. 2).

11. After Capitol sent in its application to NABER[5] for frequency coordination in December 1989, RAM promptly protested the application, arguing that 152.48 MHz was too busy from RAM's use of the channel to permit Capitol to be licensed. (CAP-01 at p. 6; CAP-18 at pp. 3-8, 11-18).[6] Nonetheless, NABER coordinated Capitol's application for 152.48 MHz on March 22, 1990, and forwarded the application to the Commission for processing and grant., (CAP-01 at p. 7; CAP-18 at p. 1).

12. Immediately thereafter, RAM started filing a steady stream of protests at the FCC attempting to prevent Capitol's application from being granted. (CAP-01 at p. 7; CAP-02; CAP-03; CAP-04; CAP-05). These protests included a Petition to Deny pursuant to Section 309(d) of the Communications Act (CAP-02), and a companion Motion for Stay of Application (CAP-03), notwithstanding that Section 309(d) petitions are not even permitted to be filed against PCP applications. (CAP-06 at p. 1).

13. In these protests RAM claimed that Capitol was applying for its proposed PCP license for the purpose of "caus[ing] harmful co-channel interference" to RAM's operations. (E.g., CAP-02 at pp. 3-5). This type of allegation by RAM was not unique to Capitol; RAM made similar allegations to NABER about the intentions of another competitor, Communication Service, Inc. (CSI), about this same time, after the competitor complained to NABER that RAM's operations on 152.48 MHz were violating Commission rules. (CAP-18 at pp., 21-23).[7]

14. On August 9, 1990, the Bureau initially rejected RAM's various protests against Capitol as erroneous, unfounded and unsupported. (CAP-06). However, RAM was undeterred and promptly filed a petition to overturn the Bureau's decision, along with another motion seeking to stay the proceedings on Capitol's application. (CAP-07; CAP-08; CAP-09).

15. After the Bureau rejected RAM's protest, RAM recruited Carl C. Perkins, a Member of Congress from Kentucky, to lobby the Commission on RAM's behalf. (CAP-18 at p. 20). Subsequently, Congressman Perkins repeatedly intervened with the Commission on RAM's behalf. (CAP-10; CAP-01 at p. 9).

16. One of the actions Perkins requested the Commission to take was to require Capitol to move its proposed PCP operation to the frequency 157.74 MHz, which had recently been made available for high-powered PCP transmitters. (CAP-10). However, making that frequency switch was undesirable for Capitol because it understood that Union Carbide, one of Capitol's largest common carrier paging customers, was using 157.74 MHz for an emergency service in the Charleston area. (CAP-01 at pp. 9-10).

17. Capitol understandably did not want to risk alienating Union Carbide by initiating a PCP service on that frequency. (*Id.*). Also, moving to 157.74 MHz was undesirable for Capitol because it would limit Capitol's eventual ability to network with other PCP systems. (CAP-01 at p. 10).

18. Notwithstanding Congressional intervention on RAM's behalf, Capitol was granted its initial PCP license for base station facilities on 152.48 MHz at Charleston, West Virginia and Huntington, West Virginia, Call Sign WNSX646, on September 12, 1990., (CAP-15 at p. 1). Thereafter, RAM filed a written complaint with the Commission in November 1990, alleging that Capitol was retransmitting pages from 152.51 MHz (Capitol's wide area RCC paging frequency) on the frequency 152.48 MHz, and that such transmissions were causing harmful interference to RAM's operations. (CAP-01 at p. 10; CAP-11 at p. 2). According to RAM, the alleged retransmissions caused an almost perfect "stereo effect" when RAM personnel simultaneously monitored the frequencies 152.51 MHz and 152.48 MHz. (Moyer Tr. 75; Capehart Tr. 284; Bobbitt Tr. 466-468).[8] Upon receipt of RAM's complaint, Capitol prepared and submitted a declaration by J. Michael Raymond, Vice President and Chief Operating Officer, under penalty of perjury, categorically denying RAM's allegations. (CAP-11 at pp. 2-3).

19. In fact, Capitol had not even started operating its PCP system by that time and it did not cause the alleged "retransmissions". (CAP-01 at p. 22; Raymond Tr. 813-814, 1013, 1303-1304). In this connection, in response to a PRB inquiry, Capitol had previously reported that Station WNSX-646 was placed into operation the latter part of March 1991. (PRB Ex. 11, p 1). No evidence has been offered rebutting this assertion. The "stereo effect" phenomenon which ostensibly caused RAM to complain to the Commission probably was an instance of intermodulation, of which Capitol had no knowledge and would not have discovered upon inspection after RAM's complaint. (Peters Tr. 1095-1099).[9]

20. RAM next filed a complaint of interference at the Commission against Capitol on March 5, 1991, claiming that Capitol's station identification on 152.48 MHz was

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[5] NABER is the FCC recognized frequency coordinator for private carrier paging systems. (CAP-18 at p. 1).

[6] RAM owns an interexchange carrier providing private line circuits serving Kentucky, Ohio and West Virginia. Capitol was a customer of RAM's private line circuits. In January 1990, while Capitol's PCP's application was being coordinated at NABER, RAM terminated Capitol's use of its private line circuits. As a result of RAM's strong- armed tactic, Capitol suffered a financial hardship by having to use a long distance carrier at additional cost. (Tr. 536-538; 812-813).

[7] In response to allegations of interference contained in a complaint filed with PRB in March 1991, Capitol submitted a declaration from CSI President, Calvin R. Basham. Basham detailed RAM's history of causing harmful interference to CSI's operation. Basham asserted that as a result of RAM's interference, CSI lost all of its customers on 152.48 MHz. (CAP-12, p. 7). Inexplicably, the record indicates that PRB never investigated Basham's allegations before instituting the instant revocation proceeding against Capitol.

[8] Other than the field inspection conducted during the week of August 12, 1991 by James G. Walker and Donald W. Bogert of the Baltimore Field Office, PRB's case rests solely on the testimony of RAM's principals and employees. No evidence from a disinterested witness corroborating RAM's charges has been offered.

[9] Walker disagreed with Peters' opinion to a certain extent, evidently because in Walker's experience intermodulation has been accompanied with audio degradation that would be discernible at least to a trained technician. (Walker Tr. 1483-1484). Peters testified that in his experience there have been instances of intermodulation where the audio is "almost perfectly pure". (Peters Tr. 1204-1205). Walker agreed, however, that there evidently were problems with intermodulation on 152.48 MHz at other times (Walker Tr. 1484), which supports Peters' opinion that this incident likely was caused by intermodulation as well. In any event, the record does not support RAM's claim that Capitol was responsible for the alleged "retransmissions".

interfering with RAM's paging transmissions. (CAP-01 at pp. 10-11; CAP-12 at p. 3). This time A. Dale Capehart, currently RAM's Corporate Vice President (Capehart Tr. 277), had called Raymond on March 4, 1991, to complain about Capitol's station ID transmissions prior to filing the written complaint at the Commission., (CAP-12 at p. 3).

21. At that time Capitol was in the process of installing and testing its PCP system, and was getting ready to initiate commercial service. (CAP-01 at p. 11). Its system consisted of a base station transmitter at Capitol's Nease Drive site in Charleston, and at Capitol's site in Huntington. (*Id.*). Capitol's paging terminal was connected to the PCP base station at Nease Drive by dedicated telephone line, and a UHF control link located at Nease Drive was used to simulcast the Charleston and Huntington transmitters. (*Id.*).

22. A Relm transceiver was modified to function as a fixed tuned receiver monitoring 152.48 MHz and "inhibiting" Capitol's PCP transmitter from operating whenever a co-channel signal was detected by the receiver. (CAP-01 at p. 11; CAP-21). This "inhibitor" was in place and functioning in Capitol's PCP system throughout Capitol's operation, both in the initial constructing and testing stages and after commercial operation started. (CAP-01 at p. 11; Raymond Tr. 1341; CAP-21). Accordingly, Raymond believed that the purpose of Capehart's call on March 4, 1991 was to try to "set Capitol up" rather than solve a legitimate interference problem. (CAP-01 at p. 12).

23. Nonetheless, Raymond attempted to be cooperative with Capehart to resolve the alleged problem, and the upshot of their telephone conversation on March 4th was that Raymond agreed to try to get a technician out to investigate the problem that day. (CAP-12 at pp. 3-4). Raymond was unable to do so, but the alleged interference stopped later that same day anyway. (CAP-12 at p. 4; Capehart Tr. 281). That tended to confirm in Raymond's mind that Capehart's call was not a bona fide complaint about interference by Capitol. (CAP-12 at p. 4).

24. During this same period of time, Capehart admitted in telephone conversations with Raymond that RAM had completely disabled its own "inhibitor" on 152.48 MHz, so that it could blot out any "interference" from other transmitters. (CAP-01 at p. 12; CAP-12 at p. 5; Raymond Tr. 1014, 1302-1303, 1345-1346). As a result, when Capitol attempted to start its commercial PCP service on March 12, 1991, RAM repeatedly initiated paging transmissions on its system while a paging transmission by Capitol was in progress. (CAP-12 at pp. 5-6). That is, RAM would "walk" on Capitol's PCP pages. (*Id.*).[10]

25. Another issue of concern to Capitol at the time was that RAM would transmit on 152.48 MHz for long periods of time, sometimes up to 15 or 20 minutes in a row, before relinquishing the channel to co-channel users. (CAP-01 at pp. 14-15; CAP-12 at p. 5). Capitol had been advised by NABER that FCC rules required PCP licensees to shut down their system after three minutes to allow other licensees to use the channel, and it was obvious to Capitol that RAM was not doing so. (CAP-01 at pp. 14-15). Capitol considered this another form of interference to its operations by RAM, because it prevented Capitol from transmitting its pages. (CAP-01 at pp. 14-15; CAP-12 at p. 5).[11]

26. On April 2, 1991, the Private Radio Bureau held a meeting at its offices in Washington, D.C. with counsel for Capitol, counsel for RAM, principals of RAM and a representative from the Office of Congressman Perkins. (HDO at ¶ 4 & n.8). At that meeting the staff bluntly told RAM and Capitol to cut out their fighting and obey the rules, or all of their licenses would be revoked by the FCC. (CAP-01 at p. 14). Raymond states that Capitol did not interpret this threat as being directed solely against it. According to Raymond, Capitol did not believe it was doing anything wrong and it was sincerely trying to comply with its obligations for sharing the channel and the rules governing PCP operations. Raymond felt that the only thing needed for RAM and Capitol to "get along" was for RAM to use its inhibitor and to shut down after 3 minutes to let Capitol transmit. Raymond states in this regard, that RAM would tie up the PCP channel for long periods of time, sometimes 15 or 20 minutes in a row, before releasing the channel and allowing Capitol to transmit. (*Id.*). RAM does not dispute that it ties up the PCP channel for long period of time. In fact, according to Raymond Bobbitt, senior Vice President of networking services for RAM, during the busiest parts of the day, RAM transmits 50 or more minutes per hour for a stretch of 4 or 5 hours (Bobbitt Tr. 493, 528-529).

27. An outgrowth of this meeting, however, was a letter from the Chief, Land Mobile an Microwave Division, to Capitol advising that RAM was not bound by the "three-minute" rule because its system was not "interconnected" within the meaning of the rules. (CAP-14 at pp. 1, 2). The Commission's data base reflected at the time, however, that RAM was fully authorized for interconnected (FB6C) operations. (CAP-20 at pp. 2, 13-15).

28. During this period of time, Raymond also called Walker at the Commission's Field Operations Bureau in Baltimore from time to time to complain about RAM transmitting on top of Capitol's pages and holding the channel for long periods of time. (CAP-01 at p. 15).[12] Capehart also was making similar calls on RAM's behalf complaining about interference by Capitol. (Walker Tr 109, 150-151).

29. In late March 1991, during this sequence of complaints, RAM's employees came to the conclusion that the reason Capitol would transmit over RAM's pages was there was some sort of technical "problem in the receiver of [Capitol's] busy monitor". (CAP-20 at pp. 5, 7). RAM's conclusion in this regard evidently was never contemporaneously communicated to Capitol.[13]

30. Instances of interference are common in the radio business, but rarely are deliberate; and Walker did not believe the allegations of deliberate interference by either

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[10] As noted, *supra*, CSI also complained of similar tactics by RAM, resulting in the loss of all his customers. (CAP-12 at pp. 7-8).

[11] CSI made similar complaints (CAP-12, pp. 7-8).

[12] Raymond sent Walker a copy of a videotape which Raymond claimed showed RAM's interfering transmissions, which Walker refused to look at. Raymond asserted he sent the tape to Walker and RAM in the hope of demonstrating that Capitol was operating properly and RAM was the real problem. (CAP-01 at p. 15).

[13] The letter from Capehart to Walker does not show that a copy was sent to Capitol (CAP-20 at p. 6); and Capehart could not recall whether he sent a copy to Capitol. (Capehart Tr. 229-230). Raymond recalls "some conversations" with RAM personnel around March 1991 concerning interference complaints, without any indication that RAM had apprised Capitol of

Capitol or RAM. (Walker Tr. 151-152). Walker generally refused to get involved in the dispute between RAM and Capitol. (CAP-01 at p. 15).

31. In light of the staff's admonitions at the April 2 meeting and the lack of response by the staff to Capitol's concerns, Capitol eventually stopped registering its complaints, notwithstanding that RAM did not alter its conduct. (CAP-01 at pp. 14-15).

32. In addition to the interference by RAM's transmissions, Capitol also experienced continuing technical difficulty with its system which affected the reliability of its service from the beginning of its operation in March 1991 until at least July 1992. (CAP-01 at pp. 16-18; CAP-15 at pp. 2-6). This technical difficulty related to interfering transmissions on Capitol's UHF "link" frequency from sources other than RAM, and to the reliability of the transmission path for the radio link frequency between the Charleston base station and the Huntington base station. (*Id.*).

33. Because of these technical difficulties, RAM's interfering transmissions, and its continuous use of the channel for long periods of time without relinquishing it for co-channel users, Capitol experienced considerable turnover of customers that tried the PCP service and found it unsatisfactory. (CAP-01 at pp. 16-18; Raymond Tr. 1416-21; Harrison Tr. 711-712, 742-744). For these same reasons Capitol had only a small handful of customers on its PCP system in August 1991. (Raymond Tr. 1380, 1417-1418).

34. On July 19, 1991, RAM again complained orally to the Commission that Capitol was maliciously interfering with RAM's PCP system, claiming that Capitol had a "device that is patched in to its paging base station that imitates the sound of a tone page transmission". (CAP-19). RAM further claimed that this "device used by Capitol is paging station testing equipment" which "is capable of being removed in less than one minute". (*Id.*). However, Capitol was not served with a copy of any such complaint, nor was it made aware of any such complaint by RAM at the time. (CAP-01 at p. 18).

35. Capitol asserts it never had and never used such a device. (Raymond Tr,. 810). No evidence has been offered by PRB showing Capitol used such a device. Nonetheless, as a result of this complaint, the Private Radio Bureau immediately requested the Field Operations Bureau to conduct an inspection of Capitol for the purpose of finding grounds to revoke Capitol's licenses. (CAP-19; Walker Tr. 1477).

36. In response to the Private Radio Bureau's request, James Walker and Donald Bogert, engineers employed at the FCC Baltimore Field Office, made a field trip to the Charleston/Huntington area to conduct monitoring of 152.48 MHz and inspections of Capitol's and RAM's PCP stations during the period August 12-15, 1991. (Walker Tr. 114, 1477-1479). On Monday, August 12, 1991 the inspectors monitored 152.48 MHz and kept logs a "good portion of the day;" on Tuesday morning, August 13 logs were also kept, but not in the afternoon;[14] on Wednesday, August 14, they monitored while driving to Ashland to inspect RAM's station;[15] and on Thursday, August 15, they monitored in the morning before arriving in Charleston to inspect Capitol's PCP station. (Walker Tr. 133; PRB-03 at pp. 1-2).

37. When they monitored 152.48 MHz they heard predominantly digital transmissions which they identified as transmissions by RAM, and fewer tone paging transmissions which they identified as transmissions by Capitol. (Walker Tr. 112. A third transmitter on 152.48 MHz was also monitored, which the inspectors identified as WNLM930. (PRB-03 at p. 2).

38. When the inspectors monitored 152.48 MHz, the tone transmissions identified as Capitol transmissions appeared to be identical sequences of tones -- a set of two sequential tones repeated once, followed by a second and third set of sequential tones. (PRB-03 at p. 2). The inspectors also observed morse code station identifications by Capitol at the rate of approximately seven words per minute. (PRB-03 at p. 2). This speed translates into about 15 seconds of air time per identification. (Walker Tr. 183).

39. According to the inspectors, the tone sequences identified as Capitol transmissions were transmitted approximately once a minute when the channel was available, but, when it was busy, the tones were held until air time was available on the channel. (PRB-03 at p. 2; Walker Tr. 112-113, 136, 145; Bogert Tr. 254). These transmission were legitimate test transmissions by Capitol. (CAP-22; Harrison Tr. 732-735; Raymond Tr. 1311-1322, 1418-1421). Walker Tr. 180.[16] Also Peters, who is an expert on paging, testified that the amount of testing by Capitol was not excessive (Peters Tr, 1125, 1130, 1142-1143, 1179-1182). The Bureau offered no expert of its own with like experience to rebut Peters' testimony.

40. During their monitoring the inspectors observed instances of RAM initiating transmissions before Capitol ceased transmitting (i.e., instances of RAM "walking" on Capitol's transmissions), as well as instances of Capitol "walking" on RAM's transmissions. (PRB-03 at p. 1). The inspectors observed that RAM "walked" on Capitol's transmissions more than vice versa (Walker Tr. 157); in fact, their logs show that such instances were caused 90 percent of the time by RAM and only 10 percent of the time by Capitol. (CAP-23 at p. 11).

41. The reason for RAM "walking" on Capitol's transmissions was discovered during inspection of RAM's PCP station; RAM hadinstalled a device on its frequency monitor to delay RAM's paging transmissions for only a maxi-

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RAM's conclusions in this regard. (CAP-01 at p. 12). The inference is compelling, therefore, that RAM in fact communicated its conclusions regarding Capitol's busy monitor only to the Commission and not to anyone at Capitol.

[14] In response to Capitol's interrogatories, Walker stated that monitoring on the channel was conducted from 11:40 a.m. to 4:30 p.m. on August 12 and from 10:49 a.m. to 11:45 a.m. on August 13., (Walker Tr. 153-154).

[15] On August 14, the field inspectors were also on unrelated assignments. (Walker Tr,. 154).

[16] Among other things, Capitol tested the "link frequency" and for "coverage". Capitol also tested to get the "group call" and "chaining" features to work to provide service to the Greenup County Rescue Squad located near Ashland, Kentucky on the Kentucky-West Virginia border. CAP-22; Harrison Tr. 733; Raymond Tr. 1332-1333. In this connection, the HDO stated that information before the Commission suggests that the Rescue Squad "never sought any relationship with Capitol for the provision of paging services in connection with its public safety function" (par. 17) and that Capitol made misrepresentations in stating otherwise (par. 19) However, at the hearing, the Bureau did not offer any evidence in support of the assertions in the HDO. Incredibly, the Bureau did not call anyone from the Greenup County Rescue Squad to testify on its behalf.

mum of two minutes whether or not anyone else was using the channel. (PRB-03 at p. 2; Bogert Tr. 259).[17] The decision to install such a device was made by Robert Moyer, the owner of RAM, and he knew when he installed it that doing so was unlawful. (Capehart Tr. 357-358).

42. By contrast, the inspectors never were able to determine why Capitol occasionally "walked" on RAM's transmissions. (Walker Tr. 167, 173; Bogert Tr. 259). The explanation probably is that transient factors such as local traffic, signal fades and the like, prevented Capitol's monitor from detecting RAM's signal in particular situations. (CAP-23 at p. 11; Bogert Tr. 259-260). Walker does not believe that Capitol knowingly transmitted while RAM was already on the air. (Walker Tr. 172).

43. The inspectors inspected Capitol's facilities on Thursday, August 15, 1991. (PRB-03 at p. 3). During the inspection Bogert had a telephone discussion about the switch settings on the terminal card, relating to the speed of the morse code identification, directly with a representative of the manufacturer of the card. (CAP-01 at p. 19; Bogert Tr. 257, 271-272).

44. At the end of this conversation Bogert made a statement to Raymond to the effect that the switch settings must be the right ones. (CAP-01 at p. 19; Bogert Tr. 273; Walker Tr. 1451-1452). Raymond believed on the basis of this exchange that the inspectors had been satisfied, and did not pursue the matter further at the time. (CAP-01 at p. 19).[18]

45. At no time during the inspection did the inspectors communicate to Capitol that they had observed Capitol interfering with RAM. (CAP-01 at p. 20). When they left at the end of the inspection, Capitol assumed that it had passed the inspection and that it did not need to take any further action. (*Id.*).

46. In the course of the inspection, Walker inquired of William D. Stone, Capitol's president and owner, whether he had any subscribers. (Tr. 1450). According to Walker, Stone replied that Marshall University was one of his largest. (Tr. 1450). Walker does not remember how he phrased his question to Stone nor did he know whether Stone understood him to be referring by his inquiry only to PCP paging customers rather than paging customers in general (Walker Tr. 164-165).[19] In the course of that same inspection, Capitol employees were asked by Walker on August 15 to provide a list of the current subscribers. The list, which was given to Walker on August 15-16 is contained in Bureau Ex. 5. (Walker Tr. 174-175). The information on page 1 of PRB Ex. 5 was prepared by Harrison's secretary in the Huntington office (Harrison Tr. 726-727).[20] The information on pages 2 and 3 were prepared by someone at Capitol's corporate headquarters in Charleston. Walker doesn't recall who in the Charleston office he asked for the information or who furnished the data to him. (Walker Tr. 174-177; Tr 1451). The list supplied does not include Marshall University as a PCP customers. (PRB Ex 5). Neither Harrison's secretary or the preparer of the list at the Charleston office was called as a witness.[21]

47. On May 19, 1992, the Bureau sent a Section 308(b) inquiry as a result of the field inspection in August 1991. (PRB-10). The inquiry requested information, *inter alia*, as to Capitol's first ten customers following the date the station was placed in operation, the names of subscribers during the August 12-15, 1991 period and current users. (*Id.* at pp. 1-2). Capitol responded to the Bureau's inquiry on June 17, 1992 (PRB-11). In responding to the staff request to reconstruct its subscriber base for different points in time, some long after the fact, Capitol personnel searched several filing cabinets for extant PCP service agreements. (Raymond Tr. 1370-1371). Capitol only supplied the names of past subscribers which they could validate with a service agreement. Capitol's search for information about past subscribers was hampered by the fact that there had been a substantial turnover of customers in the preceding months and, as a matter of policy, Capitol does not retain sales agreements after a customer cancels. (Raymond Tr. 1368-1369). No evidence has been adduced which disputes Raymond's assertion that Capitol provided the most accurate information it could furnish and that Capitol did not intend to mislead the Commission concerning its PCP customers. (Raymond Tr. 1380, 1392; CAP-1, pp. 24-27).

48. On July 30, 1992, the Bureau issued a Notice of Apparent Liability for Forfeiture (NALF) alleging "willful and repeated ... malicious[] interfere[nce]" by Capitol to RAM and other "egregious misconduct." (PRB-12 at pp. 1-2). The Bureau alleged that forfeitures totalling $42,000 were warranted for malicious interference in violation of Section 333 of the Communications Act; "forfeitures totalling $6,000 were warranted for failure to take reasonable steps to avoid harmful interference, in violation of Section 90.403(e) of the Commission's rules; and forfeitures were warranted totalling $3,000 each for violation of Sections 90.405(a)(3) and 90.425(b)(2) of the rules (excessive testing and morse code identification slower than the prescribed rate of 20-25 words per minute, respectively). PRB-12 at p. 3). The Bureau then reduced the calculated total forfeiture from $54,000 to $20,000 so that the NALF could be issued under delegated authority. (*Id.*).

49. Simultaneously with the NALF issued to Capitol, the Bureau issued a warning letter to RAM that use of the two-minute time-out device on its system was improper. (CAP-25). However, no forfeiture of any kind was sought by the Bureau. (*Id.*).

50. After the NALF was issued by the Bureau, RAM personnel started monitoring the PCP channel 152.48 MHz and Capitol's wide area RCC channel 152.51 with a pair of Hark Verifiers. (Blatt Tr. 373-376). The Hark Verifier is an electronic device with a radio receiver that can be tuned to a particuar paging frequency, and a decoder that deciphers information contained in a paging signal. (Blatt Tr. 373-374). When connected to a printer, the decoded output from the Verifier can be reproduced on paper. (*Id.*; PRB-16; PRB-17).

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[17] This device will sometimes hereinafter be referred to as a "two-minute time-out" device.

[18] The inspectors dispute that Raymond should have been left with that impression, despite Bogert's statement about the factory settings. It is not necessary to resolve this conflict in the testimony, however, because the inspectors corroborate Raymond's testimony that the reason for the slow speed was Capitol's good faith reliance on the correctness of the factory settings for the dip switches (CAP-01 at p. 24), and not some plot to interfere with RAM by deliberately slowing down the identification transmissions.

[19] Stone did not testify in the proceeding.

[20] Harrison first saw the list at the hearing (Harrison Tr. 727).

[21] The Bureau made no effort to ascertain the persons responsible for the list. (Tr. 1384).

51. Monitoring of the paging channels is said to have ocurred in late August 1992 and in October 1992. (PRB-09; Blatt Tr. 376). However, the only actual data from the monitoring that was introduced into the record was for October 28, 1992 (PRB-16; PRB-17). The monitoring by RAM personnel determined that some digital pages transmitted on 152.48 MHz were duplicates of pages that previously had been transmitted by Capitol on its wide area RCC paging system on 152.51 MHz. (Blatt Tr. 376-377). The delay between the duplicate transmissions varied, but ranged from approximately 30 seconds to 4 or 5 minutes. (Blatt Tr. 413).

52. These pages were deemed by RAM personnel to occupy channel time unnecessarily, and thus to unnecessarily delay transmission of RAM's pages. (Bobbitt Tr. 608). However, they were held until channel time was available and did not "walk" on RAM's transmissions. (*Id.*). RAM accused Capitol of causing the duplicate transmissions before the Bureau but never advised Capitol of its complaint. (CAP-01 at p. 21; PRB-09; Capehart Tr. 324, 362; Stipulation Tr. 632-634).

53. Capitol has denied causing the duplicate transmissions. (Raymond Tr. 814-815). Peters, an expert on paging and intimately familiar with Capitol's operation as its long standing consultant, is also of the view that Capitol was not responsible. (Peters T. 1252-1254). Peters points out that RAM never verified that Capitol's transmitter was the source of the "dummy" pages on 152.48 MHz. (Peters T. 1096, 1116-1117, 1253-1254).[22]

54. On July 27, 1993 the Commission issued its agenda for the August 3, 1993 meeting which stated that it would consider adoption of a hearing designation order and order to show cause against Capitol. (CAP-01 at p. 21). The Commission then issued a press release on August 3, 1993 outlining the action it had decided to take at the request of the Private Radio Bureau; and the text of the order itself was issued on August 31, 1993. (*Id.*). Capitol obtained a copy of the text of the order on September 2, 1993, and discontinued operation of its PCP station that same day on advice of counsel. (*Id.*).

CONCLUSIONS

55. The HDO requires a determination whether Capitol willfully violated the Commission's Rules and whether Capitol misrepresented facts and lacked candor in its dealings with the Commission. PRB has the burden of proceeding and proof on all the designated issues. PRB has failed to satisfy its burden. The evidentiary record convincingly establishes that Capitol has not "willfully" or "repeatedly" violated the Commission's Rules, that it has not intentionally deceived the Commission, and that it has been candid and forthcoming in its dealing with the Commission. It is therefore concluded that there is no justification for revoking any of Capitol's licenses or for imposing a forfeiture.

PRB Failed To Show A Credible Motive For Capitol's Alleged Scheme

56. Capitol, an FCC licensee for thirty years with an unblemished record, sought entry into the PCP business. Capitol's motive in establishing a "budget" paying service was to be able to offer service to customers that otherwise would not subscribe to Capitol's RCC service -- either because they could not afford or would not choose to pay the price. When Capitol decided to enter the PCP business, it was charging approximately $30.00 per month per unit for its RCC transmission service and equipment, while RAM was charging somewhere on the order of $6.00 per month for its PCP business. (E.g., Raymond Tr, 871). PRB advances the theory that Capitol engaged in its PCP business merely to cause interference to RAM. PRB asserts that RAM and Capitol "compet[e] for the same group of customers," and that Capitol's motive for the alleged scheme to interfere "was to disrupt RAM's business in the hopes of attracting customers to the competing RCC service." (PRB Findings at §§1-2).

57. The Bureau's conclusion, premised solely on speculation, is flatly belied by the evidence in this case. While it is true that RAM and Capitol were both competitors in the general sense, it is not true that Capitol's RCC service and RAM's PCP service effectively competed "for the same group of customers", as speculated by the Bureau. In fact, the different pricing strategies adopted by RAM and Capitol resulted in somewhat different niches of the paging market. Thus, it would have been entirely pointless for Capitol to have engaged in such a scheme as alleged by PRB. *Assuming arguendo* that Capitol's actions would have had the effect of driving any of RAM's customers off its system, the fact remains that any such customers would not have then become customers of Capitol's RCC system due to its price.

58. PRB's theory does not make any sense for other reasons as well. Capitol has been in the paging business and an FCC licensee for 30 years. Surely, competition is not new to it. Why should RAM's appearance on the scene suddenly cause Capitol to assume such a new and bizarrely different character? Moreover, the alleged scheme occurred in the midst of unprecedented growth and success of Capitol's RCC paging business, by far the biggest part of its business. Why would Capitol jeopardize its successful business by attempting to cause interference to a company that was not in fact causing Capitol any measurable competitive harm? PRB offers no explanation.

59. Finally, even *assuming arguendo* that Capitol would have sought to engage in such a scheme as PRB alleges, it is totally implausible that Capitol would have engaged in the particular conduct in this case. As Bobbitt, one of RAM's employees admitted, interference that is actually harmful or destructive in paging is the simultaneous transmission (i.e., "walking" on another licensee's transmissions); minor delays in transmissions are not significant. Yet, in this case the most serious allegations against Capitol center around transmissions that occurred during *otherwise unoccupied* channel time. Significantly, when RAM or oth-

[22] Raymond and Peters have expounded possible causes for the retransmissions. According to Raymond, a saboteur would have been able to cause the retransmissions without Capitol's knowledge, by tapping into its system with a computer terminal via a dial-up phone line which Capitol maintained for other purposes. (Raymond Tr. 814-818; 989-1010). Peters is of the view, however, that the evidence submitted by the RAM-affiliated witnesses points to another transmitter entirely, a "pirate" transmitter that was connected to a Hark Verifier and a personal computer programmed with relatively simple instructions. (Peters T. 1091, 1115-1119).

er licensees were transmitting, the alleged "interference" by Capitol was held until channel time became available., In this connection, PRB has failed to cite a single case where transmissions during unoccupied channel time have been held to constitute "harmful interference." PRB's reliance on *Henry C. Armstrong, III,* 92 FCC 2d 485 (Rev. Bd. 1983) and *Gary W. Kerr,* 91 FCC 2d 107 (Rev., Bd 1982) is misplaced on their facts. These cases hold, contrary to PRB's assertions, that findings of harmful interference for purposes of FCC rule violations have been confined historically to instances of intentional and repeated "jamming" or "walking" on transmissions of other licensees. That is not the situation in this case.

60. In short, PRB has failed to suggest a credible motive for the scheme it alleges, much less demonstrate such motive by evidence., On the other hand, RAM's motives for attempting to run Capitol and other competitors off the PCP channel are self evident. RAM has a very successful PCP business and it is determined not to share the channel with other competitors, notwithstanding that it is required by law to do so. As noted by Peters, operators with a large number of subscribers will do whatever they can to protect their business interests.

61. Consistent with its anti competitive objectives, RAM embarked on a calculated course of conduct to prevent Capitol from ever getting a license in the first instance, or to drive it off the frequency if ever licensed. RAM's campaign started with the allegation before NABER that 152.48 MHz was too busy with RAM's transmissions to license Capitol on the frequency. At the same time, RAM employed the coercive tactic of terminating Capitol's use of its private license circuits to Capitol's financial detriment. When this strategy failed to produce the desired result, RAM launched a paper war at the Commission accusing Capitol of applying for its proposed PCP license for the purpose of causing harmful interference to RAM's operations. This type of allegation by RAM was not unique to Capitol. RAM made similar allegations to NABER about the intentions of another competitor, CSI, when CSI complained to NABER that RAM's operations on 152.48 MHz were violating Commission rules.[23] Even after PRB rejected RAM's various protests as erroneous, unfounded and unsupported, RAM did not cease its efforts to drive out its potential competition so that it could continue to monopolize the "shared" channel.

62. After PRB rejected RAM's protest, RAM enlisted the aid of a Congressman who repeatedly intervened with the Commission on RAM's behalf. Notwithstanding such intervention, Capitol received its PCP license. Undaunted, RAM proceeded to bombard the Commission with complaints that Capitol was causing interference to its operation which ultimately proved successful in removing Capitol from the channel. Capitol, in defense, complained to PRB that RAM was "walking" on Capitol's pages and that RAM was transmitting for long periods of time before relinquishing the channel, which RAM has not denied. Notwithstanding that RAM's charges were uncorroborated, PRB has accepted RAM's versions of the facts without question. On the other hand, Capitol's complaints about RAM's conduct, which are corroborated by CSI (see CAP-12, p. 7), have consistently received a deaf ear. In this connection, the marching order to the field inspectors recites: "If you can establish malicious interference, he [Dick Shiben] wishes to follow up with revocation of all Capitol's licenses and/or the imposition of a substantial forfeiture." (CAP-19). No mention is made of Capitol's complaints about RAM's action, which is indicative of the uneven treatment accorded to RAM's and Caitol's complaints.

Record Reflects RAM's Unwillingness To Cooperate With Capitol In Sharing Channel

63. With respect to the sharing of PCP channels, the Commission has made clear that "licensees must cooperate in their use", that "both parties must be cooperative and flexible in arriving at a mutually satisfactory channel sharing arrangement," and that the "first licensee on the channel has no greater right than subsequent licensees with regard to satisfactory sharing of the channel." *Nu-Page of Winder,* 6 FCC Rcd 7565 at 7566 (1991). The record reflects on the basis of Capitol's dealings with other competitors and the statements of Raymond that Capitol would have been reasonably cooperative in attempting to establish a channel sharing arrangement. (See Blatt Tr,. 439-444, 451; Raymond Tr. 975-976). The uncontradicted evidence of record evinces no such inclination on the part of RAM. Contrary to the holding in *Nu-Page,* RAM's actions establish that it was not interested in cooperating with Capitol in the use of the channel. Rather, it was determined not to share the channel with Capitol notwithstanding that it was required by law to do so. As pointed out by Peters, channel sharing reduces the amount of channel-time available to the sharing entities. In light of RAM's large number of subscribers, it is clearly in RAM's economic interest to have the channel all to itself, rather than to share the channel with a competitor such as Capitol.

64. The record shows only one attempt by RAM at cooperation, and that was when RAM suggested tying its and Capitol's terminal together with a dedicated wireline. (CAP-13). That suggestion was by no means a panacea for the interference alleged by RAM and Capitol was amply justified on technical, economic and operational grounds in declining RAM's suggestion (CAP-23 at pp. 12-13; Peters Tr. 1226-1230).

65. At all other times when RAM claimed to suffer an interference problem, the record demonstrates that RAM chose to complain to PRB, rather than cooperate with Capitol to resolve their differences. The evidence is persuasive that RAM's complaints of interference were actually products of a predetermined campaign to drive Capitol from its licensed PCP channel. Thus, in November 1990, RAM concluded that an intermodulation problem on 152.48 MHz was deliberate interference by Capitol and immediately filed a written complaint with the Commission. RAM did so without contacting Capitol to try to find out what was going on. In fact, Capitol had not even started operating its PCP system at that time and could not have been at fault. In March 1991, Capehart, RAM's Corporate Vice President, contacted Capitol to complain of alleged interference from Capitol's morse code station identification. Raymond agreed to get a technician out to investigate and fix the alleged problem; and in fact the problem

[23] RAM claims that Capitol is the only party with which RAM has ever had any trouble sharing the channel (RAM Findings at § 92). RAM has conveniently forgotten about CSI's complaints, ignored by PRB, that RAM was operating in violation of the Rules.

stopped later that evening even though Raymond had been unable to dispatch the technician by that time. Nonetheless, the next day RAM filed another complaint of written interference at the Commission, challenging the *bona fides* of Capitol's actions. Further, after March 1991, when Capitol first initiated commercial operation, RAM never bothered to contact Capitol when RAM allegedly experienced interference problems. Instead, RAM continued to file complaints with the Commission attacking Capitol's actions and its bona fides. In fact, RAM even failed to advise Capitol when RAM's personnel independently concluded that the problem RAM had been experiencing was due to a technical problem with Capitol's "inhibitor" receiver.

PRB Failed To Establish That Capitol Violated The Rules Or Misrepresented Facts And/Or Lacked Candor

66. Turning to the designated issues in this case, apart from the field investigation in August 1991, PRB's case rests entirely on the testimony offered by Moyers, Capehart, Blatt and Bobbitt, all RAM principals and employees. Their testimony, which is not corroborated by a single non-RAM affiliated witness, is entitled to no weight. As discussed, *supra,* the evidence overwhelmingly establishes that from the very outset of Capitol's application for a PCP license, RAM embarked on a calculated course of conduct to prevent Capitol from getting a license in the first instance, or to drive it off the frequency if ever licensed. All of the above named RAM affiliated witnesses played a role in this anti-competitive campaign. The campaign to keep Capitol off the channel did not end at the pre-hearing stage. The Presiding Judge had an opportunity to observe the testimony of these RAM affiliated witnesses and finds their testimony evasive, not forthcoming and prone to exaggeration, if not outright fabrication, concerning alleged interference caused by Capitol to RAM. RAM's obvious bias renders their testimony inherently unreliable and lacking of credibility.

67. HDO Issue (a) inquires whether, "during the month of October 1990, from November 15, 1990 through November 18, 1990, on March 4, 1991, on March 19, 1991, and/or from July 17, 1991 through July 19, 1991," Capitol caused harmful interference to RAM in violation of Section 90.403(e) of the rules and/or Section 333 of the Communications Act. (HDO at ¶28 .a). Section 90.403(e) requires Capitol to "take reasonable precautions to avoid causing harmful interference ... includ|ing| monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing harmful interference."

68. In turn, "harmful interference" is defined for this purpose in relevant part as "any emission, radiation, or induction which specifically degrades, obstructs, or interrupts |a| service provided by |RAM's PCP| station||." 47 C.F.R. §90.7. Additionally, Section 333 of the Communications Act prohibits any person from "willfully or maliciously interfer|ing| with or caus|ing| interference to any radio communications of any station licensed or authorized by or under this Act". 47 U.S.C. §333.

69. The evidence fails to establish any violation by Capitol of Section 90.403(e) of the rules or Section 333 of the Communications Act, much less any violation during the period specified in HDO Issue No. 1. Capitol was not operating its PCP station during 1990 and could not have caused any such interference in October or November of 1990.

70. Moreover, there is no evidence of any kind of interference to RAM during October 1990, and the evidence of the "stereo effect" phenomenon during November 1990 is too general in any event to fairly establish that such phenomenon occurred on the specific dates of November 15, 1990 through November 18, 1990. More importantly, of course, the evidence also establishes that the "stereo effect" phenomenon was actually an incidence of intermodulation for which Capitol was not at fault, not an instance of interference by Capitol to RAM.

71. The only evidence proffered specifically in regard to March 4, 1991 was the testimony of Capehart, whose testimony is entitled to no weight. Moreover, even if the testimony is credited, it does not establish a violation of either Section 90.403(e) of the rules or Section 333 of the Communications Act.

72. The evidence is undisputed that Capitol had an air monitor or "inhibitor" in place and functioning on March 4, 1991, which is a standard industry practice for complying with the monitoring requirements prescribed by Section 90.403(e) of the rules. The alleged interference on March 4th stopped before Capitol was able to get a technician out to investigate, which raises a strong suspicion whether the complaint was bona fide to begin with. Thus, Capitol understandably was not able to determine that it was causing any interference to RAM when it did investigate the complaint.

73. Under these circumstances, there is no basis in the record for concluding that Capitol knowingly engaged in one or more acts on March 4, 1991 that caused harmful interference to RAM's PCP service. Similarly, there is no basis for concluding that Capitol failed in any respect in complying with the requirement to monitor before transmitting on 152.48 MHz on that date, or to otherwise take reasonable steps to avoid causing harmful interference to RAM.

74. The only evidence relating to March 19, 1991 is the letter from Capehart to Raymond, Exhibit CAP-13. That exhibit does not necessarily establish the truth of the matters asserted therein, except to the extent it may constitute an admission by RAM.

75. In any event, the most it shows, under any conceivable interpretation or analysis, is that both Capitol and RAM had their "inhibitors" in place and functioning on that day, but that both paging systems nonetheless would sometimes attempt to seize the channel for transmissions simultaneously. Thus, the letter itself expressly refutes any findings that Capitol failed to monitor as required by Section 90.403(e), or that it willfully transmitted while RAM transmissions were in progress.

76. Finally, even assuming the testimony offered by the RAM witnesses concerning July 1991 were credited, it is also entirely too general and conclusory to support any finding of violations by Capitol during the period July 17, 1991 through July 19, 1991.

77. HDO Issue (b) inquires as to the same substantive violations as HDO Issue a, but changes the relevant time to the period during which the Commission inspectors conducted their field visit. (HDO at ¶28.b). There are two substantive matters to be considered under HDO Issue b: (1) Capitol's repeated tone transmissions for testing purposes, and (2) the occasional instances where Capitol

"walked" on RAM's transmissions. Both of these transmissions were testified to by Commission inspectors Walker and Bogert after monitoring 152.48 MHz during the period August 12-15, 1991.

78. Addressing them in reverse order, the instances where Capitol "walked" on "RAM's transmissions do not constitute "willful" or "malicious" interference by Capitol, nor do they constitute a failure to comply with Section 90.403(e) of the rules. There is no dispute that Capitol's "inhibitor" was in place and functioning during this period of time, and that most of the time Capitol's transmissions were in fact held until channel time was available.[24] The inspectors admitted in their testimony that they were never able to determine the reason for Capitol "walking" on RAM's transmissions, nor could they identify any malfunction in Capitol's equipment. (Walker Tr. 197).

79. Peters, a paging expert, opined that the cause of these incidents likely was transient factors affecting reception in particular instances. (CAP-23 at p. 11). This is consistent with Bogert's impression that he may have observed some noise in the inhibitor's receiver during the inspection. (Bogert Tr. 259-260). Raymond's testimony also is uncontradicted that during their inspection, Walker and Bogert did not advise Capitol that some of its transmissions were causing interference to RAM. (See CAP-01 at p. 23).

80. The HDO affirms that to establish grounds for a forfeiture, the evidence must show that "the licensee knew that he was doing the acts in question". (HDO at ¶11). Similarly, as shown by its express language, the gist of a violation of Section 333 of the Communications Act is a deliberate act with actual intent to cause interference to a licensee's transmissions.

81. This view is underscored by the legislative history of the section, which makes clear that the underlying purpose of the statute is to prohibit actions that are expressly designed to cause interference, such as "intentional jamming" and "deliberate transmission on top of the transmissions of authorized operators" in order to "obstruct their communications." See H.R. Rept. No., 316, 101st Cong., 2d Sess. 8, reprinted in 1990 U.S. CODE CONG. & ADM. NEWS 1294, 1301.

82. Under these circumstances, the evidence clearly establishes that the instances of Capitol "walking" on RAM transmission during August 12-15, 1991, were not "willful" or "malicious" acts of interference, nor were they the result of any failure by Capitol to take "reasonable precautions ... includ[ing] monitoring the transmitting frequency for communications in progress".[25] Accordingly, no violation of Section 333 of the Act or 90.403(e) of the rules occurred by reason of such transmissions. The same conclusion is reached with respect to the tone transmissions by Capitol. The uncontradicted evidence establishes that the tone transmissions were bona fide test transmissions.

83. Walker, who does *not* claim to be an expert on paging (Walker Tr. 150), opined that the testing was excessive, but did not challenge Capitol's evidence that they were good faith test transmissions. On the other hand, Peters, who *is* an expert on paging, is of the view that the testing was *not* excessive. (Peters Tr. 1125, 1130, 1142-1143, 1179-1182). In the absence of rebuttal evidence challenging Peters' opinion, Peters viewpoint is accepted.

84. The issue of whether or not Capitol's testing was excessive is relevant to HDO Issue (b) only if "excessive" testing *per se* also constitutes "harmful interference" within the meaning of the definition in Section 90.7 of the rules. In turn, any excessive testing by Capitol could constitute "harmful interference" only if it can be said to "specifically degrade [or] obstruct||" the paging service provided b RAM.

85. The evidence does not support any such findings in this case. Peters testified that Capitol's test transmissions neither "degraded" nor "obstructed" RAM's service as those terms are commonly understood. (Peters Tr. 1100-1103). Even assuming arguendo that Capitol's testing could be said to be "excessive" as an abstract proposition, the most that could be said is that such tests might have delayed RAM's transmissions momentarily; but there is no evidence whatsoever that they caused any measurable "disruption of RAM's service.

86. PRB's assertion that "excessive" testing is a form of harmful interference, for purposes of Rule 90.403(e) and Section 333 of the Communications Act, violations even where such testing occurred during unoccupied channel time is wholly without support. As discussed, *supra*, *Armstrong* and *Kerr*, cited by PRB, hold that findings of harmful interference have been confined historically to instances of intentional and repeated "jamming" or "walking" on transmissions of other licensees. PRB has not cited a single case supporting its theory, which is rejected.

87. Further, as pointed out by Capitol in its findings, similar and even more extensive delays can result from many causes wholly internal to a PCP system, including the number of subscribers on a channel and the mix of paging units on a channel. (Bobbitt Tr. 521-525). Thus, it would be practicably impossible for the Commission to fairly attribute particular delays to the fact that "testing" was deemed to be "excessive," rather than, say, the fact that the affected licensee itself had an "excessive" number of voice pagers in service that resulted in even a greater delay of paging transmissions.[26]

88. Moreover, the concept of "excessive" testing is specifically dealt with in a separate rule section, namely Section 90.405(a)(3). Thus, there is simply no need to strain the outer limits of Section 90.403(e) of the rules or Section 333 of the Act by attempting to import notions of excessive testing into the concept of "harmful interference" otherwise proscribed by those provisions., If "excessive testing"

[24] What they thought at the time was a defect in the inhibitor's design (PRB-03 at p. 5 & #3) was actually a mistake by the inspectors. (See CAP-21).

[25] As reflected in the findings (par. 40) RAM "walked" on Capitol's transmissions (90% of the time); Capitol on RAM's transmissions (10% of the time). Also, unlike in the case of Capitol, RAM's "walking" on Capitol's transmissions was clearly deliberate since RAM employed a "two-minute time-out" device. See Finding 41. Notwithstanding, no sanction of any kind has been imposed on RAM.

[26] Raymond noted in his testimony that it was strange that RAM had so many voice pagers on its new paging service, when the trend in the industry was to avoid voice paging as much as possible in favor of more air-efficient types. (Raymond Tr. 936). Peters also testified to the incentives that incumbent licensees have in a shared channel situation to use up as much channel time as they can. (Peters Tr. 1106, 1112). RAM's incentives to load up on voice pagers thus was to try to limit or prevent sharing of the channel with others.

is a violation of Commission rules, it should be dealt with as a direct violation of Section 90.405(a)(3) rather than indirectly as a form of "harmful interference".

89. Finally, in this regard, the evidence in this case does not support any finding that the tone testing by Capitol during August 12-15, 1991 "degrade[d]" or "obstruct[ed]" RAM's service so as to constitute "harmful interference" to that service. Walker testified that when the inspectors monitored 152.48 MHz it was busy "75 percent of the time". (Walker Tr. 155). This necessarily included both RAM's and Capitol's transmissions, and the transmissions observed from WNLM930 as well. Thus, 25 percent of the time the channel still was not in use by anyone during the period the inspectors monitored, even with Capitol's test transmissions. Accordingly, RAM had ample opportunity to transmit its pages on a timely basis during this period.

90. This conclusion is underscored by the admissions of Bobbitt, a RAM affiliated witness. He specifically distinguished in his testimony between a situation where two minutes worth of pages were lost due to simultaneous co-channel transmissions (i.e., situations where pages are "walked" on by a co-channel user) and the situation where pages were delayed from being transmitted for two minutes due to waiting for the channel to become available. (Bobbitt Tr. 494). Bobbitt testified that the former situation would be "significant" but admitted that the wait for air time in the latter situation "is not excessive". (*Id.*).

91. Under these circumstances, even if it is assumed, *arguendo*, that "excessive testing" could be a form of "harmful interference" within the meaning of Section 90.403(e) of the rule or Section 333 of the Communications Act, the evidence in this case establishes that the testing engaged in by Capitol during the period August 12-15, 1991 does not come close to rising to such level. Therefore, again, no violation of those provisions by Capitol occurred by reason of its testing transmissions during the period August 12-15, 1991.

92. Issue (c) inquires whether "from November 15, 1990 through November 18, 1990, on March 4, 1991, and/or from July 17, 1991 through July 19, 1991," Capitol transmitted "communications for testing purposes" that "were not kept to a minimum and every measure was not taken to avoid harmful interference," in violation of Section 90.405(a)(3) of the Commission's rules. (HDO at ¶28.c). The evidence of record wholly fails to establish that any such violations occurred.

93. In relevant part, Section 90.405(a)(3) of the rules provides:

> (a) Stations licensed under this part may transmit only the following types of communication: * * * * *
>
> (b) Communications for testing purposes required for proper station and system maintenance. However, each licensee shall keep such tests to a minimum and shall employ every measure to avoid harmful interference.

94. Section 90.405(a)(3) thus establishes two independent duties which may be violated: (1) communications for testing purposes must be kept "to a minimum," and (2) in conducting such tests the licensee must "employ every measure to avoid harmful interference". The evidence does not show that Capitol violated either duty in this case, particularly with respect to the period of time covered by HDO Issue (c). In this regard, PRB has conceded that "[N]o evidence was adduced concerning issue (c), which must be resolved in Capitol's favor." (PRB Findings, page 56).

95. HDO Issue (d) inquires as to the same rule violation as Issue (c), but again changes the relevant period to the time the Commission inspectors conducted their field visit. (HDO at ¶28 .d). Again, the evidence fails to establish a violation by Capitol and, hence, this issue similarly must be resolved in Capitol's favor.

96. It is undisputed that, with the exceptions discussed above in paragraphs 78-79, Capitol's inhibitor was functioning properly during this period of time and held the test pages until channel time was available. (E.g., Walker Tr. 112; Bogert Tr. 254). There is thus no substantive issue as to whether Capitol employed every measure to avoid harmful interference within the meaning of the second duty prescribed by Section 90.405(a)(3).

97. The only matter meriting any discussion under this issue is whether Capitol kept its tests "to a minimum," i.e., whether it engaged in "excessive" testing. On this issue the probative evidence is conflicting, as noted above in paragraph 83. Walker, who does not claim to be an expert on paging, opined that the testing was excessive; while Peters, who *is* an expert on paging, opined that it was *not* excessive. The opinion of Peters warrants greater weight due to his expertise in the paging industry. In this connection, as noted, *supra*, PRB did not call an expert to rebut Peters.[27] Additionally, the issue must be resolved in Capitol's favor even without resolving the conflict in the testimony of Walker and Peters. The Private Radio Bureau has the burden of proof with respect to HDO Issue (d) (HDO at ¶30). The most that can be fairly said is that the evidence on this issue is equally divided and the Bureau thus failed to carry its burden of proof.[28] [29] Therefore, whether the conflict in testimony is resolved or not, HDO Issue (d) must be resolved in favor of Capitol.

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[27] Peters did not speak to the issue of the time the automatic testing program was inadvertently left on all night by Capitol. (See, e.g., CAP-22 at p. 4). However, the uncontradicted evidence is that this incident was neither "willful" nor "repeated". In this connection, there is no factual basis for PRB's claim that the tone transmissions occurred "around the clock without being turned off" while the inspectors were in Charleston. (See PRB Conclusions, p. 36). Thus, imposition of a forfeiture for this incident is not warranted.

[28] Even if the evidence proffered by Walker is sufficient to establish a violation of Section 405(a)(3) of the rules, only a warning to Capitol, and not a forfeiture, would be warranted. The Private Radio Bureau deemed it sufficient to only issue a warning to RAM for installing the two-minute time-out device, notwithstanding that installing such a device was a serious violation of the rules. (See CAP-25). Here, by contrast, the most that could be said is that Capitol made a good faith error of judgment in the amount of testing it did. Even-handed treatment of the two parties requires that no forfeiture should be imposed on Capitol.

[29] PRB argues in its Reply that even if RAM's witnesses are disregarded entirely, "the interference observed by FCC engineers warrants the revocation of all Capitol's licenses and imposition of a forfeiture..." (par. 7). The Bureau's position can not be reconciled with the light sanction imposed in *Texidor Security Equipment, Inc.*, 4 FCC Rcd 8694 (1989) involving far

98. HDO Issue (e) inquires whether from August 12 through August 15, 1991, Capitol "willfully and/or repeatedly" caused its PCP station to identify its transmissions in morse code at a rate less than the 20-25 words per minute prescribed by Section 90.425(b)(2) of the rules. (HDO at ¶28.e). While Capitol did identify its station in morse code at a rate less than the prescribed 20-25 words per minute, PRB failed to prove it did so "willfully" during this period of time. Therefore, this issue likewise will be resolved in favor of Capitol.

99. Although it is undisputed that Capitol was identifying its station at the rate of approximately seven words per minute rather than the prescribed 20-25 words per minute during August 12-15, 1991, it likewise is undisputed that this was due to an erroneous setting of the terminal card at the factory and a mislabeling of the settings on the card by the manufacturer. (CAP-01 at p. 19; Bogert Tr. 257, 271-273). The first time Capitol was alerted to the existence of a possible problem was during the inspection of Capitol's facilities on August 15, 1991, the *last* day of the period specified in HDO Issue e. Therefore, there is no evidence whatsoever that Capitol "willfully" transmitted its identification too slowly on August 12, 13, and 14, 1991, as inquired by the HDO.

100. No such finding may be made with respect to August 15, 1991 as well. Even after the problem was brought up at the inspection, the evidence is unclear as to how the matter was left after Bogert talked to the manufacturer. The inspectors may have felt that they made it clear that there was still a problem notwithstanding the exchange with the manufacturer, but Raymond believed the inspectors had been satisfied and thus did not pursue the issue further at that time. (CAP-01 at p. 19). It is not necessary to resolve this conflict because the inspectors corroborate Raymond's testimony that the reason for the slow speed was Capitol's good faith reliance on the correctness of the factory settings for the dip switches and not some plot to interfere with RAM by deliberately slowing down the identification transmissions. Under these circumstances, again, there is no warrant for finding that Capitol "willfully" identified its PCP station too slowly, even on August 15, 1991.[30]

101. HDO Issue (f) inquires whether "from November 15, 1990 through November 18, 1990" Capitol transmitted on 152.48 MHz "for purposes other than completing private carrier pages" or to transmit "common carrier paging traffic," in violation of Sections 90.173(b), 90.403(c) or 90.415(b) of the rules. (HDO at ¶28.f). No extended discussion is required in order to resolve this issue in favor of Capitol. As pointed out repeatedly above, the evidence conclusively establishes that Capitol was not operating on 152.48 MHz in November 1990 for *any* purpose. Thus, it could not have done so in violation of the specified rules.

102. Similarly to Issue (f), HDO Issue (g) inquires whether "on or about August 27, 1992 and continuing to the present" Capitol transmitted on 152.48 MHz "for purposes other than completing private carrier pages" or to transmit "common carrier paging traffic," in violation of Sections 90.173(b), 90.403(c) or 90.415(b) of the rules. (HDO at ¶28.g). This issue is also resolved in favor of Capitol.

103. The evidence on this issue centered around Blatt's use of two Hark Verifiers to simultaneously monitor the frequencies 152.51 MHz (Capitol's wide area common carrier paging frequency) and 152.48 MHz. Monitoring is said to have occurred beginning in late August 1992 and at other times later that fall. However, the only actual data from the monitoring that was introduced into the record was for October 28, 1992. (PRB-16; PRB-17).

104. On the basis of this monitoring the RAM-affiliated witnesses claimed that Capitol was selectively retransmitting on 152.48 MHz some common carrier pages from 152.51 MHz. The HDO alleges, in turn, that such retransmissions violate various of the Commission's rules, including Sections 90.173(b), 90.403(c) and 90.415(b).

105. It is unnecessary to analyze those rule requirements in detail, because the evidence persuasively establishes that Capitol did not engage in the conduct charged. Capitol has denied causing the duplication transmissions (Raymond Tr. 814-815). The Presiding Judge finds such testimony credible. In fact, having had an opportunity to observe Capitol's witnesses including Raymond, the Presiding Judge finds their testimony overall to be forthcoming and entirely believable. Peters is also of the view that Capitol was not responsible.

106. Wholly apart from the fact that testimony of the RAM-affiliated witnesses will not be credited, a fatal flaw in RAM's investigatory methodology is that they never competently identified a Capitol transmitter as the source of the "dummy" pages on 152.48 MHz. (Peters Tr. 1096, 1116-1117, 1253-1254).

107. It is also entirely implausible that Capitol would have engaged in the conduct alleged by the RAM-affiliated witnesses. By the time this type of retransmission started, Capitol had just been hit with a $20,000 NALF alleging "egregious misconduct" for "malicious[| interfere[nce]" to RAM. (PRB-12). Capitol has been an FCC licensee for 30 years; it has "a very healthy respect for the FCC, if not an outright fear; " and it knew it was being closely watched by RAM. (CAP-01 at pp. 1-2; Peters Tr. 1116; Raymond Tr. 1019-20).

108. Furthermore, the nature of the transmissions themselves belie any inference that Capitol was at their root. They did not occur while RAM was transmitting, i.e., they did not "walk" on RAM's pages. Instead, they were held until air time was available. Moreover, to the extent PRB-16 is fairly representative of the character of the transmissions, they were all digital pages and never had more than half a dozen or so pages batched together in the same transmission. Thus, the "dummy" transmissions were never more than a few seconds long before relinquishing the channel -- a period of time that Bobbitt admitted would not have a significant adverse impact on RAM's service.

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more serious violations. In *Texidor*, a licensee operating in the Business Radio Service on a secondary non-interference basis caused harmful interference to co-channel users in violation of Sections 90.403(e)(f) and (g). In addition, he did not reply to the Notice of Violation issued by the EIC and ignored repeated calls made by field personnel after the issuance of the Notice. Notwithstanding Texidor's willful violation of the Rules, Texidor was issued a forfeiture in the amount of $1,000. Here, in addition to revocation of all of Capitol's licenses, PRB seeks a forfeiture of $95,000.

[30] The issue speaks to violations on particular dates. Any alleged violations on dates other than those specified in the *HDO* are, therefore, irrelevant.

109. Even assuming arguendo that Capitol desired to disrupt the operations of its competitor RAM (which it did *not),* it is absolutely impossible to believe that it would have elected to do so by engaging in this type of retransmission. The retransmissions were so subtle and so limited that they were totally ineffective as any form of competitive disruption to RAM. Accordingly, it is simply impossible to believe that Capitol could have been the cause of them. For all of these reasons, HDO issue (g) is resolved in favor of Capitol.

110. The final substantive issue is the HDO inquiry as to whether, in its dealings with the Commission, Capitol misrepresented facts to the Commission or was lacking in candor. Again, the evidence overwhelming requires resolution of this issue in favor of Capitol.[31]

111. Insofar as misrepresentation are concerned, the HDO identifies two matters in which misrepresentations allegedly may have occurred: (1) representations about the existence and number of Capitol's PCP paging subscribers, and (2) representations about the Greenup County Rescue Squad. With respect to the Greenup County Rescue Squad, Capitol's testimony affirming the existence and nature of that relationship is uncontradicted. (CAP-01 at pp. 27-28; CAP-22). As noted, *supra,* PRB called no witnesses to rebut Capitol's testimony.

112. With respect to Capitol's PCP paging subscribers, the most that the evidence shows is that there may have been some minor inconsistency in the precise identification of Capitol's PCP subscribers at the various times and places in responding to the Commission's different questions. (CAP-01 at pp. 24-27). If so, the record reflects they were simply honest mistakes resulting from the difficulty in determining precise answers from Capitol's records. (*Id.*). In fact, the thrust of Capitol's response in each case was that its PCP station was attempting to serve subscribers, but that it had no more than a relative handful at the times inquired about by the Commission, due to the various difficulties it had been experiencing. Such response was truthful and could not have misled the Commission in any respect.[32] Accordingly, in the absence of evidence of intentional deception, there is no basis for finding any misrepresentation by Capitol in this proceeding.

113. There is similarly no basis for finding lack of candor. Again, the Bureau did not introduce any evidence of lack of candor in this case, and ¶20 of the HDO is the only source for including the issue in the proceeding. As discussed above, the evidence is overwhelming that Capitol's PCP operations were bona fide at all times, including the times it was engaged in testing, and that the representations Capitol made to the Commission in response to RAM's complaints were entirely truthful and accurate. Therefore, there is no basis for finding lack of candor by Capitol with respect to any of these matters.

114. The allegations in the HDO relating to Capitol's "inhibitor" in fact turn out to have been the result of investigatory error by the Commission's inspectors. Similarly mistaken are the allegations in the HDO concerning Capitol's computerized record capability. It appears tht PRB erroneously concluded that Exhibit PRB-05, pp. 2-3, was the product of a routine report generated by Capitol's business computer. In fact, the record establishes that it was manually compiled and produced on a word processor or typewriter. (Raymond Tr. 983). Again, this very serious allegation of misconduct, like the others in this case, turns out to have no basis in fact.

115. In sum, the evidence adduced at the hearing conclusively establishes that Capitol's application for and operation of its PCP station was in all respects a *bona fide* business venture. Capitol has not "willfully" or "repeatedly" violated the Commission's rules governing PCP operations and has at all time dealt honestly and forthrightly with the Commission. It is therefore concluded that there is no justification for revoking any of Capitol's licenses or for imposing a forfeiture.[33]

Accordingly, IT IS ORDERED, that the "Order To Show Cause" and "Order Of Forfeiture" ARE VACATED and this proceeding IS TERMINATED.[34]

FEDERAL COMMUNICATIONS COMMISSION

Joseph Chachkin
Administrative Law Judge

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[31] HDO Issues (i) through (m) are derivative issues which depend upon the resolution of the preceding issues. Since all of the preceding issues are resolved in Capitol's favor, as shown above, there is no need to separately discuss Issues (1) through (m) herein.

[32] The Commission has repeatedly affirmed that the core of misrepresentation and lack of candor is "deceit". E.g., *Character Qualifications, supra,* 102 FCC 2d at 1196. Whether Capitol had two or five customers at any given time, or whether a customer were REMC or Pioneer Home Improvement, is wholly irrelevant to the issues in this case and could not possibly have had any adverse impact on the Commission's exercise of its statutory responsibilities. There is thus no reason to equate a mistake in compiling Capitol's customer lists with a "misrepresentation" to the Commission.

[33] While the evidence clears Capitol of charges of misconduct the same cannot be said of RAM. The record reflects that RAM has been guilty of "egregious" misconduct in pursuing its anti-competitive objective. RAM's PCP license was not set for hearing and is, therefore, outside the jurisdiction of the Presiding Judge.

[34] In the event exceptions are not filed within 30 days after the release of this Initial Decision, and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of

Requests for Waivers
in the First Auction of
594 Interactive Video and Data
Service Licenses

ORDER

Adopted: October 7, 1994; Released: October 7, 1994

By the Deputy Chief, Common Carrier Bureau:

1. Before the Bureau are a number of variously styled requests filed by high bidders[1] for certain licenses in the Interactive Video and Data Service (IVDS). One group of requests essentially seeks a waiver from the Commission that would permit them to delay the payment of their initial down payments on these licenses that were due on August 8, 1994 until a future date. These requests were filed by American Classic Financial Company, Ball Park Souvenirs, Inc.,[2] the Broward Times, Inc., Tarik Choudhury, Commercial Realty St. Pete, Inc.,[3] Manoranjan Das, Ruth Das, Graceba Total Communications, Inc., Interactive America Corporation, Louisiana Interactive Broadcasting System, Inc., Henry Mayfield, Phoenix Data Communications, Inc., Rasputin International, Inc., James Speights, and Vision TV, Inc. Some of these requests were filed prior to the August 8 down payment deadline while others were filed after that deadline. Some filed multiple requests. EON Corporation and Radio Telecom and Technology, Inc. (RTT) opposed the Petition for Extraordinary Relief filed by Commercial Realty St. Pete, Inc.

2. A second group of high bidders made their initial down payment but requests relief from the requirement of further payments (*see* joint Petition for Extraordinary Relief of AG Partners, Friends of IVDS, IVDCO LLC, IVDS/RLV Partnership, Infopower International, Nanowave Technologies, New England Mobile Communication, Tele-Link Communications, WCTV Partners, Washington Communications, Wayne Partners, and Zarg Corporation, hereafter "Joint Petitioners"). This group of petitioners also requests that the Commission reduce the amount of interest payments for those high bidders entitled to installment financing, and to either freeze the grant of all IVDS licenses or extend the time for construction of the facilities covered by the license. Graceba Total Communications, Inc. (Graceba), which also made its initial down payment, filed a similar request. We do not address here the petition filed by the Joint Petitioners or by Graceba, but we do address the first group of requests, as well as certain other miscellaneous requests, below.

3. Many in the first group of petitioners argue that their respective financial backers unexpectedly withdrew financial support shortly after the auction, leaving them unable to pay the 10 percent initial down payment by the August 8, 1994 deadline (*see, e.g.*, American Classic, the Broward Times, Louisiana Interactive). Others argue that assertedly late or erroneous winning bidder schedules sent by the FCC's auction contractor prevented them from making their deposit in a timely manner (*see, e.g.*, Tarik Choudhury and Ruth Das).

4. Some in this first group argue that the purported lack of readily available equipment to provide IVDS service justified a delay in the payment deadline (*see, e.g.*, Commercial Realty St. Pete, Inc., Manoranjan Das, Phoenix Data). These petitioners state that there is only one supplier of IVDS equipment, EON Corporation, whose equipment is type accepted[4] by the FCC.[5] They argue, for example, that the public interest would not be served by requiring high bidders to make their down payments until there is some assurance that working technology for IVDS systems exist, until there are at least two type accepted IVDS equipment vendors, and until equipment can be shipped on a timely basis so that the licensee does not forfeit its license for failure to meet the construction requirements in the FCC's Rules.[6]

5. We address first the group of petitions requesting waiver of the requirement for submission of a 10 percent initial down payment. This requirement derives from the Second and Fourth Reports and Orders in PP Docket No. 93-253, 9 FCC Rcd 2348 (1994) and 9 FCC Rcd 2330 (1994). There, the Commission noted that high bidders would be required to make a down payment in order to provide assurance that they would be able to attract capital, to discourage default, to assure that such bidders would be able to pay the full amount of their bids, and to ensure payment of the default penalty if default subsequently occured. *See, e.g.*, Fourth Report and Order at para. 25, Second Report and Order at para. 190. The Commission required payment by auction winners of a down payment equal to 20 percent of their winning bids within five

[1] The first IVDS auction was held in Washington, D.C. on July 28-29, 1994.

[2] This request will be dismissed as moot. This applicant ultimately made its initial down payment in a timely manner.

[3] Commercial Realty St. Pete, Inc. filed two pleadings: a "Petition for Extraordinary Relief" and an "Emergency Motion for Stay, Lite Pendente." Both seek essentially the same relief, which is to stay all payment deadlines applicable to the IVDS auction until a later date. The Motion for Stay will be addressed separately.

[4] Type acceptance is a process by which equipment manufacturers demonstrate to the Commission that equipment which is to be used in connection with an FCC issued station license meets certain technical standards designed to promote efficient use of the radio spectrum. *See* Subpart J of Part 2 of the Commission's Rules. Only type accepted equipment may be used to operate an IVDS system. *See* 47 C.F.R. Sec. 95.851. To date, the Commission has type accepted IVDS equipment from one manufacturer, EON Corporation.

[5] We note, however, that RTT on September 28, 1994 filed a request for assignment of a grantee identifier to be used in future applications for equipment authorizations. *See* letter of Peter Tannenwald, counsel to RTT, to Acting Secretary, FCC.

[6] *See* Petition for Extraordinary Relief of Commercial Realty St. Pete, Inc. at 7-8. Section 95.833 of the Commission's Rules requires IVDS licensees to make their service available to increasing amounts of the population or geographic area in their license area over time. Failure to attain such coverage causes the IVDS license to cancel automatically.

business days after the close of the auction.[7] Small businesses, as defined by the Commission, were permitted to split their down payments into two parts, each equal to 10 percent of their winning bid. *Id.* at n.145. In any case, however, a minimum of 10 percent of a bidder's winning bid is due within five business days following the close of bidding.[8]

6. The requests for waiver of the requirement for timely initial down payments by the first group of petitioners are denied. *WAIT Radio* v. *FCC*, 418 F.2d 1153 (D.C. Cir. 1969). One of the most common reasons offered in support of a waiver was the purported lack of equipment availability. In several instances, the petitioners state that a facsimile letter sent from one high bidder to other high bidders discussing the purported lack of IVDS equipment was responsible for withdrawal of financial backing needed to make their down payments. *See, e.g.,* August 15, 1994 letter from Marilyn Moore, President, Louisiana Interactive Broadcasting System, Inc. to General Counsel; August 18, 1994 letter from Keith Clayborne, President, the Broward Times, Inc. to Secretary, FCC. This facsimile letter was submitted as an attachment to Ms. Moore's letter. The facsimile letter appears to have been authored by Commercial Realty St. Pete, Inc., another winning bidder which did not submit its initial deposit. It states that because IVDS system equipment was purportedly unavailable, winning bidders should jointly petition the FCC to defer the August 8 deadline for initial down payments. *See also* August 15, 1994 letter from Henry Mayfield to Chief, Special Services Division.[9]

7. The status of IVDS equipment availability, however, is a matter which we believe prudent businesspersons would investigate prior to committing thousands or millions of dollars for an IVDS license. The availability of equipment, its cost, and its capabilities are matters which have an important bearing on whether and how much to bid for an IVDS license. Bidders who won IVDS licenses without fully understanding these matters should not be able to shift responsibility for their actions onto the government. Grant of a waiver would do so by allowing them to avoid the financial obligations they willingly undertook when they applied to participate in the auction. The exercise of due diligence *prior* to participating in an auction is very much in the public interest and we wish to do nothing that would discourage such conduct.

8. Moreover, both RTT and EON Corporation have vigorously disputed allegations of equipment unavailability. RTT, for example, states that it intends to have equipment available for delivery in 1995 and has a strategic alliance with Oki Electric Co. to bring equipment to the market. *See* Comments of RTT on Petition for Extraordinary Relief at 2. EON also states that one winning bidder has been quoted as saying that it has been talking with large equipment manufacturers and that the bidder expects to contract with one of those firms to develop the hardware technology for it. *See* EON Opposition to Petition for Emergency Relief at 8-9.

9. Grant of a waiver would also be grossly unfair to those applicants who, notwithstanding the nascent state of IVDS, nonetheless made their initial down payments, for they would be worse off after having complied with the rules. For example, EON Corporation, which was, through affiliates, a successful high bidder on several IVDS licenses and which made substantial initial down payments for those licenses, opposes Commercial Realty St. Pete's emergency motion to stay IVDS payment deadlines. EON states that its substantial financial commitment to IVDS would be at risk if licensing were to be delayed. *See* EON Opposition to Emergency Motion for Stay at 2.

10. Moreover, contrary to the petitioners' apparent expectations, the purpose of type acceptance is limited: it is intended to minimize the potential for harmful interference[10] and is not intended as a governmental warranty that a particular manufacturer's equipment is commercially acceptable and available in commercial quantities. The fact that only one manufacturer's IVDS equipment was type accepted was a matter of public record before the IVDS auction took place. A prudent bidder would be aware of this and would adjust its bids accordingly. Grant of the requested waiver would shift responsibility for imprudent business practices onto the government rather than on the bidder, where it belongs.[11]

11. The Commission also cannot be responsible for the private business arrangements that an applicant has made to finance its successful bid. If an applicant is unsure of its financing, it seems that the more appropriate course would be to not bid or to not bid in excess of the commitments of which it was reasonably certain. If a single letter sent after the auction has occurred can derail financial commitments

[7] Due to computer difficulties, the Commission afforded winning bidders an extra day to submit their initial down payments.

[8] The initial assertion by Ruth Das and others similarly situated that the FCC's contractor sent him an incorrect winning bidder schedule, thereby justifying a waiver of the requirement to submit an initial deposit, is specious. It is correct that certain schedules, including that sent to Ruth Das, listed an erroneously large figure for the required initial down payment. Nonetheless, the contractor orally notified some of these bidders of the correct figures in sufficient time to enable them to wire funds to the Commission's lockbox bank. Second, even if the initial winning bidder schedule contained an erroneously large figure for the required payment, in no case would this justify making no down payment at all. The winning bidder schedule is provided purely for the convenience of the bidders. All winning bidders are required under the terms of the rules to make an initial down payment of at least ten percent of their winning bid within five business days after the auction. There are no exceptions. *See* Section 1.2107 of the Commission's Rules.

[9] Mr. Mayfield's other request, which is to amend his application from individual applicant to partnership status, is denied. Such a change would be a major amendment and is not permitted under Section 1.2105 of the Rules.

[10] *See* Amendment of Part 2 of the Commission's Rules, 23 FCC 2d 79 (1970).

[11] Commercial Realty St. Pete also argues in its Petition for Extraordinary Relief, that a "giant bottleneck" will develop due to the demands for IVDS equipment placed upon EON Corporation. This, assertedly, will prevent IVDS licensees from meeting the construction deadlines of Section 95.833 of the Commission's Rules, and cause them to lose their licenses. This outcome, rather than being virtually guaranteed as the petitioner asserts, is highly speculative and vigorously disputed. *See* Comments of RTT on Petition for Extraordinary Relief. Even if it were true, the appropriate course is not to delay payment of the initial down payment but to request a waiver of the construction deadline. *Id.*

amounting to many thousands or even millions of dollars, we are concerned whether the bidder was ever a serious, qualified bidder.

12. Grant of the requested waiver is likely to undermine the important public interest goal that only serious, qualified bidders participate in spectrum auctions. As the Commission made clear in para. 192 of the Second Report and Order, a substantial delay between auction and down payment would "subvert our objective of reducing speculative bidding because it would provide financially unqualified bidders with an opportunity to 'shop' a winning bid in an effort to obtain financing for a down payment. This would undermine the integrity of the auction itself." Such "bid shopping" is exactly what several of the petitioners have stated they intend to do if a waiver is granted. Grant of the requested waivers will further encourage such undesirable conduct and lessen the likelihood that in the future, only serious, qualified bidders will participate in Commission-sponsored auctions.[12] *See also In re Rule Interpretation and Waiver Requests for the Auction of Ten Nationwide Narrowband Personal Communication Service Licenses*, DA 94-768, released July 11, 1994, and Public Notice, IVDS Bidder Alert, released August 5, 1994.[13]

13. The Commission also observed that there was a greater risk of default during the period between the close of the auction and licensing than immediately after the auction because there is a greater risk of a drop in license values. *Second Report and Order* at para. 190. Grant of a waiver would increase the likelihood that any drop in license values would be borne by the government rather than by bidders. No bidder was forced to bid at the auction, and the government cannot guarantee the financial success of widely differing business plans or prospects. The waiver requests are denied for this reason as well.[14]

14. Also before the Bureau are requests by Emerging Technologies Partners, Georgia Felger, Henry Mayfield and Pueblo Communications to allow them to elect small business status even though the time for amending FCC Form 175 has passed.[15] Section 1.2105 of the Commission's Rules provides that bidders will have a limited opportunity to cure defects in their Form 175 except that failure to sign an application or to make the required certifications may not be corrected. As announced by Public Notice issued July 7, 1994 such corrections were due no later than July 14, 1994. Thus, requests to correct applications in order to elect small business status should have been filed no later than that date.

15. However, it appears that the public interest would be served by waiving the July 14 deadline in this instance and allowing the aforementioned four bidders to elect small business status at this time. The initial Form 175 which was distributed by the Commission to potential bidders contained a misprint that may have misled applicants into believing that there was no need to elect small business status separate from status as a minority or woman owned business. Although the Commission moved to correct this situation both through the issuance of a Public Notice on June 17, 1994[16] and through overnight letters to each applicant who appeared to have been misled, it is not clear that the Commission was able to reach every applicant in sufficient time to allow it to correct possible misimpressions.

16. The benefits of small business status should not be denied due to confusion or misunderstandings which may have been caused by misprints for which the Commission is responsible. Congress made clear its desire to ensure opportunity for these entities in new Section 309(j) of the Communications Act, and no other bidder would be prejudiced by allowing these four winning bidders to elect small business status at this time. Moreover, the misprint has been corrected in subsequent versions of Form 175; therefore this particular problem should not occur again. Accordingly, the request by these four petitioners to elect small business status out of time are granted. The licenses issued to these petitioners, however, will be conditioned upon submission within 30 days after issuance, of a certification by the applicant under penalty of perjury that it qualifies for small business status under the Comission's Rules.

17. Also before the Bureau is a request from Ball Park Souvenirs, Inc. to delay for seven to ten days the submission of certain engineering information which would normallly be filed with its Form 574. This request is based upon asserted difficulties in retaining engineering consultants to perform this work on a timely basis. We note that all high bidders at the July 28-29, 1994 auction for IVDS licenses were required to submit Form 574 no later than August 15, 1994. See Public Notice No. 44160 released August 2, 1994. We recognize that there are a limited number of consulting engineers capable of performing such work on short notice. We previously granted, and here confirm, Ball Park's request.

18. Accordingly, IT IS ORDERED, that the requests for waiver of the filing date requirement for the initial down payment filed by American Classic Financial Company, the Broward Times, Inc., Tarik Choudhury, Commercial Realty St. Pete, Inc., Manoranjan Das, Ruth Das, Interactive America Corporation, Louisiana Interactive Broadcasting System, Inc., Henry Mayfield, Phoenix Data Communications, Inc., Rasputin International, Inc., James Speights, and Vision TV, Inc. ARE DENIED.

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[12] This reason for not granting the waiver requests is therefore particularly germane to the waiver requests filed by petitioners such as Manoranjan Das, Ruth Das, and Rasputin International, Inc. It is irrelevant that these petitioners are now assertedly willing and able to make their initial deposits if only the FCC will absolve them from any possible penalties for late payment.

[13] The pendency of a Section 403 investigation into certain IVDS high bidders does not justify a waiver of the down payment requirement. Interactive America, which made this request, offers no reason why this investigation should affect the monetary obligations of high bidders.

[14] See also n.12, *supra*.

[15] Status as a small business permits an IVDS applicant to make its down payment in two stages and provides access to government-sponsored installment financing. *See* Fourth Report and Order at n.44 and paras. 53-54. A few applicants were previously permitted to elect small business status after the time for such amendments had passed because the Commission's contractor was unable to successfully communicate to these applicants the need to revise their applications to correct a misprint in FCC Form 175.

[16] "First Amendment to Bidder's Information Package and the May 23, 1994 Public Notice Announcing the Auction of Approximately 600 Interactive Video and Data Service Licenses to be held July 28-29, 1994 at the Omni Shoreham Hotel, Washington, D.C.", released June 17, 1994.

19. IT IS FURTHER ORDERED, that the requests by Emerging Technologies Partners, Georgia Felger, Henry Mayfield and Pueblo Communications to elect small business status out of time ARE GRANTED.

20. IT IS FURTHER ORDERED that, the request of Henry Mayfield to amend his FCC Form 175 from individual applicant to partnership status IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief,
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN Docket No. 90-314

In the Matter of

Amendment of the Commission's Rules to Establish New Personal Communications Services	RM-7140, RM-7175, RM-7618

ERRATUM

Released: October 31, 1994

This Erratum corrects the *First Report and Order* in the above captioned proceeding, 8 FCC Rcd 7162 (1993), concerning Narrowband Personal Communications Services. This error came to the Commission's attention just recently.

In Appendix A, Section 99.411 (d) is revised to read as follows:

§ 99.411 Emission limits for the 901-902 MHz, 930-931 MHz, and 940-941 MHz bands.

(d) A minimum spectrum analyzer resolution bandwidth of 300 Hz shall be used when showing compliance with paragraphs (a)(1)(i) & (ii) and (a)(2)(i) & (ii).

* * * * *

This rule was subsequently renumbered as § 24.133.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Smith
Chief,
Office of Engineering and Technology

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

Cape Television, Inc. File No. BALCT-931013KK
(Assignor)

and

Boston University Communications, Inc.
(Assignee)

For Assignment of License of
Station WCVX(TV), Channel 58,
Vineyard Haven, Massachusetts

MEMORANDUM OPINION AND ORDER

Adopted: September 28, 1994; Released: October 31, 1994

1. The Commission has before it for consideration an application to assign the license of station WCVX(TV), Channel 58, Vineyard Haven, Massachusetts, from Cape Television, Inc. (Cape) to Boston University Communications, Inc. (BUCI). Station WCVX(TV) has been off the air since August 14, 1991. The proposed assignee is the licensee of station WQTV-TV (IND), Channel 68, Boston, Massachusetts. Because WQTV-TV's predicted grade B contour overlaps that of station WCVX(TV), the proposed acquisition would violate the duopoly provision of Section 73.3555 of the Commission's Rules. However, BUCI proposes to operate WCVX(TV) as a satellite of WQTV-TV pursuant to the satellite exception contained in Note 5 to the Commission's multiple ownership rule. The assignment application and satellite proposal are unopposed.

2. Under our satellite policy, *Television Satellite Stations*, 6 FCC Rcd 4212 (1991) (petitions for partial stay and reconsideration pending),[1] applicants for television satellite status are entitled to a presumption that the proposed satellite operation is in the public interest, if the applicants meet the following three criteria: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the proposed satellite as a full-service station. *Id.* at 4213-14. Applications that qualify for the presumption, and are unrebutted by an opposing party, will be viewed favorably by the Commission. *Id.* at 4214. For the reasons set forth below, we find that the proposed operation of WCVX(TV) as a satellite station is consistent with our policy.

3. The applicant's engineering study demonstrates that there is no overlap of the City Grade contours of stations WCVX(TV) and WQTV-TV. Thus, the satellite proposal meets the first component of the presumption.

4. With respect to the second criterion, applicants can demonstrate that an area is underserved by using one of two tests. The first is a "transmission test," whereby a proposed satellite's community of license is considered underserved if there are two or fewer full-service stations already licensed to it.[2] Our records show that WCVX(TV) is the only television station licensed to Vineyard Haven. Therefore, utilizing the "transmission test," the applicant has demonstrated that the proposed satellite station will provide service to an underserved area.

5. Finally, as to the third criterion, applicants must demonstrate that no alternative operator is ready and able to construct or to purchase and operate the television station as a full-service station. Cape notes that after acquiring the television station from the Resolution Trust Corporation in September of 1992, it discovered that the station's equipment, transmitter tower and transmission line were in worse condition than originally thought. To cover the extensive cost of repairs, Cape went to members of the community soliciting their direct financial support or advertising revenues until the station was back on the air. Cape states that no support was forthcoming. Cape asserts that it then sought out the local community college in an effort to create some form of joint venture; the college, however, was not in any position to supply the additional funding necessary. Unable to obtain the additional resources necessary to resume broadcast operations, Cape avers that it approached other broadcasters that had indicated an interest in operating the station. To that end, it entered into negotiations with a Boston broadcast group that proposed operating the station as a satellite; however, no conclusive arrangement materialized. It then entered into discussions with a religious broadcast group, but despite months of negotiations, no concrete offer was made for the station. As a last resort, Cape states that it contacted BUCI which stated its interest in operating the station as a satellite of its Boston station. Cape contends that BUCI's proposed operation provides the only hope of activating the station and making it a viable entity in the future. Based on the information provided with respect to its diligence in seeking a buyer, and the fact that the station is off the air, we believe that the applicant has satisfied the third criterion.

6. Therefore, the applicants have established the basis for presuming that satellite operation should be authorized, and we find no facts suggesting that the presumption not be followed in this case. Accordingly we find that BUCI's proposed satellite operation of WCVX(TV) is in the public interest. In view of the foregoing, and having determined that the applicants are qualified in all other aspects, we find that a grant of the application would serve the public interest.

7. Accordingly, IT IS ORDERED, That the application (BALCT-931013KK) for consent to assign the license of station WCVX(TV), Channel 58, Vineyard Haven, Mas-

[1] We note that there is an outstanding proceeding concerning television satellite stations, which invites comment on whether television satellites should be exempted from the 12-station limit set out in the multiple ownership rules. *Second Further Notice of Proposed Rulemaking* in Docket No. 87-8, 6 FCC Rcd 5010 (1991). Grant of the application before us will not implicate the 12-station rule.

[2] We have also defined an "underserved area" in terms of a "reception test," but that test is not material here. See *Television Satellite Stations*, 6 FCC Rcd at 4215.

sachusetts, from Cape Television, Inc. to Boston University Communications, Inc., IS GRANTED, subject to the following conditions: That the assignment of license covered by BALCT-931013KK be consummated within sixty (60) days of the date of the grant, that the Commission be notified of such consummation within one day thereafter and that the station resume broadcasting within ninety (90) days after consummation of the grant of this application; and That ten (10) days prior to commencement of regular programming operation, the assignee submit certification that equipment performance measurements were made in accordance with Section 73.1590 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this Memorandum Opinion and Order to the applicants by Certified Mail – Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: October 31, 1994

FCC ANNOUNCES 1995 MAXIMUM REIMBURSEMENT FEE FOR AN AMATEUR OPERATOR LICENSE EXAMINATION

The FCC announced today that effective January 1, 1995, the maximum allowable reimbursement fee for an amateur operator license examination will be $5.92. This amount is based upon a 2.96% increase in the Department of Labor Consumer Price Index between September 1993 and September 1994.

Volunteer examiners (VEs) and volunteer-examiner coordinators (VECs) may charge examinees for out-of-pocket expenses incurred in preparing, processing, administering, or coordinating examinations for amateur operator licenses. The amount of any such reimbursement fee from any one examinee for any one examination session, regardless of the number of elements administered, must not exceed the maximum allowable fee. Where the VEs and the VEC both desire reimbursement, they jointly decide upon a fair distribution of the fee.

This announcement is made pursuant to Section 97.527 of the Commission's Rules, 47 C.F.R. § 97.527.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PP Docket No. 93-253

In the Matter of

Implementation of Section 309(j)
of the Communications Act --
Competitive Bidding

Waiver of Section 24.813
of the Commission's Rules --
General Application Requirements
for the Broadband Personal
Communications Service

ORDER

Adopted: October 25, 1994; Released: October 25, 1994

By the Chief, Private Radio Bureau.

1. The Commission, through the Chief of the Private Radio Bureau pursuant to delegated authority, on its own motion, waives certain provisions of Section 24.813(a) of the Comission's rules, for purposes of short-form applications (Forms 175) to be filed for A and B block licenses in the broadband personal communications service (PCS). We find that requiring the submission of some ownership information may be unduly burdensome and will not serve the underlying purpose of the ownership disclosure rules.

2. Section 24.813(a) of the Commission's rules provides that parties filing the short-form application, Form 175, to participate in broadband PCS auctions shall include in an exhibit, *inter alia:*

> (1) A list of any business five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, attributable stockholder or key management personnel of the applicant. This list must include a description of each such business' principal business and a description of each such business' relationship to the applicant.[1]
>
> (2) A list of any party which holds a five percent or more interest in the applicant, or any entity in which a five percent or more interest is held by another party which holds a five percent or more interest in the applicant (*e.g.*, If Company A owns 5% of Company B (the applicant) and 5% of Company C, then Companies A and C must be listed on Company B's application).[2]

Section 24.813(a) also requires:

> (4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application.[3]

Section 24.819 of the Commission's rules provides that the Commission may waive a broadband PCS rule if the underlying purpose of the rule will not be served by its application in a particular case, and grant of a waiver is otherwise in the public interest; or if the unique facts and circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest.

3. Potential applicants for broadband PCS frequency blocks A and B, applications for which are due to be filed Oct. 28, 1994, and which are scheduled for auction to begin Dec. 5, 1994, have brought to our attention two problems with the scope of the ownership disclosure rules contained in Section 24.813(a).[4] First, under our rules, applicants are required to list in their short-form applications all businesses in which each attributable stockholder owns at least 5 percent. This requirement would necessitate reporting of interests in firms with no relation to the services for which licenses are being auctioned, and for many companies, particularly investment firms with diverse holdings, might be extremely burdensome, especially when calculating indirect ownership interests in outside firms using the multiplier. We believe that, for purposes of short-form application processing, requiring stockholders in applicants to report *all* firms in which they hold an interest of 5 percent or more would be excessively burdensome.

4. The purpose of the ownership disclosure requirements is to allow the Commission to determine who is the real party in interest,[5] to determine compliance with the anticollusion rules[6] and ownership restrictions such as the multiple-and cross-ownership rules[7] and the alien ownership restrictions.[8] All applicants already must certify that they are in compliance with these regulations, and the applicants themselves should be able to supply the bulk of the information required by Section 24.813(a) without significant burden. However, we believe that requiring that information about all attributable stockholders' other interests be provided on the short-form application would not serve these purposes. Moreover, since short-form proce-

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[1] *See* Section 24.813(a)(1) of the Commission's rules, *Fourth Memorandum Opinion and Order*, PP Docket 93-253, FCC 94-264 at Appendix B, (released Oct. 19, 1994).

[2] *See* Section 24.813(a)(2) of the Commission's rules, *Fifth Report and Order*, PP Docket 93-253, FCC 94-178 at Appendix B (released July 15, 1994).

[3] *Id.* at § 24.813(a)(4).

[4] *See, e.g., ex parte* submission in PP Docket 93-253 of Dow, Lohnes & Albertson, Oct. 21, 1994; *ex parte* submission in PP Docket 93-253 of Gurman, Kurtis, Blask & Freedman, Oct. 12, 1994.

[5] Compare 47 C.F.R. §§ 22.13, 24.413; *see also Real Party in Interest Disclosure*, 55 RR 2d 1053 (1982).

[6] *See* Section 1.2105 of the Commission's rules.

[7] *See* Sections 24.204 and 24.229(c) of the Commission's rules.

[8] *See* 47 U.S.C. § 310(b).

dures are generally designed to "reduce the administrative burdens at the initial stages of the auction process, avoid unnecessary delay in the initiation of service, and encourage applicants to participate in the process,"[9] we find that relaxing the disclosure requirements in this regard serves the public interest. Consequently, we waive the information disclosure requirement of Section 24.813(a)(1) and 24.813(a)(2) with respect to other, outside ownership interests of attributable stockholders of applicants, except that direct, attributable ownership interests in other Commercial Mobile Radio Service licensees or applicants shall be disclosed.[10] All long-form reporting requirements will continue to apply.

5. Applicants have also brought to our attention an additional problem caused by the requirement of Section 24.813(a)(4) to submit signed and dated copies of partnership agreements. These parties point out that partnership agreements often discuss strategic business objectives and financial and business obligations, including bidding strategies, and might be highly competitively sensitive. In addition, the identities of partners and other attributable parties, and their stake in the applicant, are fully disclosed pursuant to the rules. We agree that submission of the information in partnership agreements with the short-form application might be highly detrimental and inequitable to applicants that are partnerships and would not serve the purposes described above. Consequently we waive the requirement that partnerships submit a signed and dated copy of the partnership agreement along with the short-form application. The requirement to submit the contents of the agreements with the long-form application remains will apply to winning bidders. We remind applicants, however, that in accordance with Part 0 of the Commission's rules they may submit the required information from the partnership agreement in confidence.[11]

6. Accordingly, IT IS ORDERED that the requirements of Sections 24.813(a)(1) and 24.813(a)(2) ARE WAIVED to the extent described above with respect to short-form applications (Forms 175) for A and/or B block broadband PCS licenses.

7. IT IS FURTHER ORDERED that the requirement of Section 24.813(a)(4) that a signed and dated copy of the partnership agreement be included with the short-form application for A and/or B block broadband PCS licenses IS WAIVED.

FEDERAL COMMUNICATIONS COMMISSION

Ralph Haller
Chief, Private Radio Bureau

[9] *Second Report and Order*, PP Docket 93-253, 9 FCC Rcd 2348, 2376 ¶ 162 (1994).
[10] *See* Section 20.6 of the Commission's Rules, *Third Report and Order*, GN Docket No. 93-252 at Appendix B (released Sept. 23, 1994).
[11] *See* 47 C.F.R. § 0.459.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Request of

KING WORLD PRODUCTIONS, INC.

For Declaratory Ruling

STAFF RULING

Adopted: October 24, 1994; Released: October 31, 1994

By the Chief, Political Programming Branch:

1. The Commission has before it a request for a declaratory ruling filed on August 19, 1994, by King World Productions Inc. (King). King seeks a Commission determination that its programs "Inside Edition" and "American Journal" are bona fide newscasts, exempt from the "equal opportunities" provision of Section 315(a) of the Communications Act of 1934, as amended. In addition, King requests that the Commission determine that news interviews broadcast during its "Rolanda" program are also exempt from the requirements of Section 315(a).

2. King states that "Inside Edition" is a nationally syndicated, first-run half hour news program featuring investigative reports on government, business, the environment, sports, and entertainment. According to King, "Inside Edition" is regularly scheduled and covers these issues in a standard newscast format, with anchors, reporters, and a heavy reliance on videotape. King asserts that individual stories are cast in news report, interview, documentary, on-the-spot news format, or a combination thereof. King asserts that, because "Inside Edition" covers newsworthy events and people, it airs stories in which legally qualified candidates for public office appear. King maintains, however, that the stories are selected solely because of their newsworthiness, as determined by the program's producers, rather than with the intent of advancing the candidacy of any particular individual. "Inside Edition" has been broadcast since 1989.

3. King states that "American Journal" is a daily, half-hour newsmagazine program featuring fast-breaking and significant news stories, often anchored from the cities in which they originate. According to King, "American Journal's" format is very similar to "Inside Edition," in that "American Journal" also employs a standard newscast format, with anchors, reporters and a heavy reliance on videotape. King states that individual stories on "American Journal" are similarly cast in news report, interview, documentary, on-the-spot news format, or some combination thereof. Because "American Journal" covers newsworthy events and people, it airs stories in which legally qualified candidates for public office appear. King maintains, however, that these stories are selected solely on the basis of their newsworthiness, and are subject to the same exercise of journalistic judgment and oversight by senior news personnel as every other story. Consequently, no story is aired with the intent of advancing any particular candidacy. "American Journal" has aired since September 1993.

4. King explains that "Rolanda" is a regularly scheduled, one hour, syndicated talk-show program that has been broadcast since January 1994. King declares that "Rolanda" is hosted by broadcast journalist Rolanda Watts, who conducts news interviews on the program. King states that Watts' journalistic experience as a former news anchor and talk-show host enables her to control the program's format and questioning by the studio audience so as to avoid the advancement of any particular candidate. King maintains that it retains editorial control over the content of the program and that all guests invited to appear on "Rolanda" are selected on the basis of their expertise or potential audience interest.

DISCUSSION

5. Section 315(a) of the Communications Act provides that if a licensee permits a legally qualified candidate for public office to use a broadcast station, it must afford equal opportunities to other such candidates for that office. In 1959, Congress amended Section 315 to exempt from equal opportunities appearances by legally qualified candidates on the following programs:

> (1) bona fide newscast,
>
> (2) bona fide news interview,
>
> (3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or
>
> (4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto).

47 U.S.C. Section 315(a)(1-4). Congress removed the inhibiting effect of the equal opportunities obligation upon bona fide news programming to encourage increased news coverage of political campaign activity. Rather than define precisely what it meant by "news," Congress chose to leave the task of interpreting the scope of each exemption to the Commission. *See* 105 Cong. Rec. 16227 (1959)(Rep. Celler); 105 Cong. Rec. 14455 (1959)(Sen. Pastore).

6. The Commission has ruled on several occasions that specific programs could be treated as bona fide newscasts.[1] In ruling that "Entertainment Tonight" and "Entertainment This Week" were bona fide newscasts, the Commission through its Mass Media Bureau, stated that, in terms of format, the principal consideration should be "whether the program reports news of some area of current events. . . in a manner similar to more traditional newscasts."[2] The Commission has thus declined to evaluate the relative quality or significance of the topics and stories selected for newscast coverage, relying instead on the broadcaster's good faith news judgment.

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[1] *Paramount Communications, Inc.*, 5 FCC Rcd 4627 (1990) ("Hard Copy"); *Paramount Pictures Corp.*, 64 RR 2d 600 (M.M. Bur. 1988)("Entertainment Tonight" and "Entertainment This Week").

[2] 64 RR 2d at 601.

7. As with the specific programs previously considered exempt under the newscast exemption, "Inside Edition" and "American Journal" appear to follow a traditional newscast format. Moreover, in finding that "Hard Copy" satisfied the criteria for a newscast exemption, we stated that "[t]he utilization of interviews, on-the-spot coverage, and documentary footage in the context of some stories presented by 'Hard Copy' is not a basis for denying a newscast exemption since these various approaches to news reporting are typical of the more traditional newscast formats."[3]

8. Accordingly, the formats of "Inside Edition" and "American Journal" appear to be similar to programs previously found to be bona fide newscasts, e.g. "Hard Copy" and "Entertainment Tonight". Further, we have no basis for believing that the stories covered in "Inside Edition" and "American Journal" are selected for any reason other than their genuine newsworthiness. Accordingly, "Inside Edition" and "American Journal" appear to satisfy the criteria established for a newscast exemption.

9. With respect to "Rolanda," in determining whether a program qualifies as a "bona fide news interview", the Commission considers the following factors: (1) whether it is regularly scheduled; (2) whether the broadcaster or an independent producercontrols the program; and (3) whether the broadcaster's or independent producer's decisions on format, content, and participants are based on newsworthiness rather than on an intention to advance an individual's candidacy. *See Request for Declaratory Ruling on Independently Produced News Interviews*, 7 FCC Rcd 4681 (1992).

10. Based on the information contained in King's request, it appears that the news interview segments of "Rolanda" are exempt from equal opportunities as bona fide news interviews under Section 315(a)(2). "Rolanda" has been scheduled for broadcast on a regular basis. The Commission has recognized that regularly scheduled programs that do not exclusively address current events, but which do include "bona fide" news interviews on a regular basis are eligible for the news interview exemption.[4] King represents that news interviews are conducted on "Rolanda." King also maintains that it retains control over the program's topics and questions asked interviewees and that the program's host is able to control audience participation and program content during the show. Moreover, according to King, all topics are selected on the basis of newsworthiness in the exercise of the producer's reasonable good faith judgement, with no intent to further any candidacy.

11. Accordingly, on the basis of the information before the Commission, it appears that "Inside Edition" and "American Journal," in the format described by King in its request, should be accorded the bona fide newscast exemption from the equal opportunities provision of Section 315(a). Further, to the extent that King regularly produces, and licensees regularly schedule for broadcast, bona fide news interviews on "Rolanda," such program segments are also exempt from equal the opportunities requirement.

12. Staff action is taken pursuant to delegated authority.

FEDERAL COMMUNICATIONS COMMISSION

Milton O. Gross
Chief, Political
Programming Branch
Enforcement Division
Mass Media Bureau

[3] 5 FCC Rcd at 4627.

[4] *Multimedia Entertainment Inc.*, 56 RR 2d 143, 148 (1984).

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
October 25, 1994

Released: October 31, 1994

KGVO Broadcasting Inc. 1800 C3-W
Licensee of Station KGVO(AM) 94080607
400 N. Ryman Street
Missoula, Montana 59802

Dear Licensee:

This letter constitutes an admonition for violation of Section 73.1212(e) of the Commission's rules. 47 C.F.R. Section 73.1212(e) (sponsorship identification).

BACKGROUND

On June 21, 1994, the Commission received a complaint alleging that on June 13, 1994, station KGVO(AM), Missoula, Montana, broadcast, without a sponsorship identification announcement as required by Section 73.1212,[1] an advertisement concerning healthcare reform. As a result of this allegation, we sent you a letter of inquiry on July 15, 1994, explaining our rules concerning such announcements. We asked whether KGVO broadcast an advertisement concerning healthcare reform, and if so, whether the spot contained sponsorship identification.

Because of the subject matter of the advertisement, we pointed out that Section 73.1212(e) requires that, if the sponsor of broadcast matter concerning a controversial issue of public importance is an entity, the station must retain a list of the sponsor's "chief executive officers or members of the executive committee or the board or directors" in the station's public file. Since at the time of the broadcast, healthcare reform was generally considered to be a controversial issue of public importance, we asked whether, if the sponsor of the advertisement at issue was an entity, your public inspection file contained a list of its principal officers.

In your response, dated July 20, 1994, you stated that the advertisement was identified as paid for by the "Healthcare Leadership Council." You submitted a tape of the advertisement to support your assertion. However, while you provided the identity of the entity-sponsor, your response did not answer our question with respect to whether a list of its principal officers was placed in your public inspection file in compliance with Section 73.1212(e). Instead, you stated that "[t]he advertisement [was] clearly issue oriented rather than politically oriented, and, therefore not required to be placed in the political file. . . ." You did not dispute that healthcare reform was a controversial issue of public importance in your community at the time of the advertisement.

In an August 5, 1994, notice of further inquiry we pointed out that our rules do not require that the text of any advertisement be placed in the political file. We also stated, however, that the information required under Section 73.1212(e) includes the list of principal officers of a sponsoring entity and that this information must be placed in the public inspection file when such an entity purchases a spot involving a controversial issue of public importance. We emphasized that Section 73.1212(e) applies to both political matter and discussions of controversial issues of public importance. The requirements of the above-described list are the same for both types of programs or spots.

In response to our further inquiry, you replied on August 29, 1994, that a list of the officers of the Healthcare Leadership Council "has been placed in [y]our public inspection files as of 8/23/94." Your reply implicitly concedes that healthcare reform at the time of the broadcast was a controversial issue of public importance in your community, and accordingly, a list of the sponsor's principal officers should have been placed in the public inspection file. Your reply also concedes that this information was not in the public inspection file at the time the advertisement aired. Further, it appears from your earlier response that you were unaware of the requirements of Section 73.1212(e), and it is questionable whether the information required therein would ever have been placed in the public inspection file were it not for our inquiry.

Licensees are required to apprise themselves of the Commission's rules and regulations and to see that their station's policies are in compliance therewith. Your failure to do so with respect to Section 73.1212(e) constituted a violation of our rules. Accordingly, KGVO IS ADMONISHED for its failure to comply with the requirements of Section 73.1212(e). This letter will be made part of KGVO's permanent record.

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[1] Section 73.1212 of the Commissions rules provides in pertinent part:

(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made . . . that such . . . material or service has been furnished to such station in connection with the transmission of such broadcast matter . . .

(e) The announcement required by this section shall, in addition . . . fully and fairly disclose the true identity of the person or persons, or corporation, committee, association, or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or on whose behalf such services or other valuable consideration is received . . . [If] a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection . . .

Sincerely,

Milton O. Gross
Chief, Political
Programming Branch
Enforcement Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-83

In the Matter of

Amendment of Section 73.202(b),	RM-8494
Table of Allotments,	
FM Broadcast Stations.	
(Cascade, Montana)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 20, 1994; Released: November 1, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 9 FCC Rcd 3582 (1994), issued in response to a petition filed by Stephen D. Dow ("petitioner"). The *Notice* proposed the allotment of Channel 285C to Cascade, Montana, as that community's first local broadcast service. Petitioner filed comments reaffirming his interest in the allotment of Channel 285C at Cascade. No other comments were received.

2. We believe the public interest would be served by allotting Channel 285C to Cascade, Montana, as it will provide the community with its first aural transmission service. Channel 285C can be allotted to Cascade consistent with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 29.7 kilometers (18.4 miles) northeast of the community.[1] The site restriction will prevent a short spacing to Station KMTX-FM, Channel 287C, Helena, Montana. Since Cascade is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for this allotment.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 16, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Cascade, Montana	285C

4. The window period for filing applications for Channel 285C will open on **December 16, 1994**, and close on **January 17, 1995**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 285C at Cascade are 47-28-43 and 111-27-13.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: October 21, 1994

CANADIAN INTERIM SHARING ARRANGEMENT FOR NARROWBAND PCS

On September 22, 1994, representatives of the FCC and Industry Canada concluded a sharing arrangement for narrowband PCS. This arrangement, entitled "Interim Sharing Arrangement For the Bands 901-902 MHz, 930-931 MHz, and 940-941 MHz," provides for the use of this spectrum for narrowband PCS near the United States/Canada border.

Previously, the FCC had allocated the 901-902 MHz, 930-931 MHz, and 940-941 MHz bands for narrowband PCS and channelized two of the three megahertz available into 34 paired and unpaired channels. For the purposes of the arrangement, the remaining one megahertz is assumed to be channelized to provide 14 additional channels for a total of 48 channels.

Based on this channeling plan, the arrangement specifies the narrowband channels that are available for use by each administration within about 75 miles of the border, as follows:

- Except as indicated below, the United States and Canada shall each have primary use of 24 channels of the 48 channels available.

- In the Detroit/Windsor region, defined as the region between 85 and 81 degrees West longitude, the United States shall have primary use of 35 channels, and Canada shall have primary use of 13 channels.

- In the Toronto/Buffalo region, defined as the area within 81 and 71 degrees West longitude, Canada shall have primary use of 29 channels, and the United States shall have primary use of 19 channels.

Other provisions of the arrangement are:

- Each administration shall have full use of all the spectrum beyond 75 miles.

- Stations in the 901-902 MHz band and all mobile stations are limited to 7 watts e.r.p.

- Base stations operating in the 930-931 MHz and 940-941 MHz bands are limited to 3500 watts e.r.p. and are unlimited in antenna height; however, in the event of interference technical and operational measures may be taken.

A summary of the arrangement for U.S. narrowband PCS channels is contained in the following chart.

Channel Number(s)	Channel Type	Service Area	Buffalo Region (71° to 81° W)	Detroit Region (81° to 85° W)	All Other Regions
1, 2, 3, 4 & 5	50/50 kHz	Nationwide	Primary	Primary	Primary
6, 7 & 8	50/12.5 kHz	Nationwide	Primary	Primary	Primary
9, 10 & 11	50 kHz	Nationwide	Primary	Primary	Primary
12	50/50 kHz	Regional	Primary	Primary	Primary
13	50/50 kHz	Regional	Restricted	Primary	Primary
14, 15, 16 & 17	50/12.5 kHz	Regional	Primary	Primary	Primary
18 & 19	50/50 kHz	MTA	Restricted	Primary	Restricted
20	50/12.5 kHz	MTA	Restricted	Primary	Primary
21 & 22	50/12.5 kHz	MTA	Restricted	Primary	Restricted
23	50 kHz	MTA	Primary	Primary	Primary
24	50 kHz	MTA	Restricted	Primary	Primary
25 & 26	50/12.5 kHz	BTA	Restricted	Primary	Restricted
A & B	12.5 kHz	MTA	Primary	Primary	Primary
C & D	12.5 kHz	MTA	Restricted	Primary	Primary
E & F	12.5 kHz	BTA	Restricted	Primary	Restricted
G & H	12.5 kHz	BTA	Restricted	Restricted	Restricted

Channel numbers are as specified in Part 24 of the Commission's Rules. On channels designated with the term "primary," licensees may operate base and mobile stations anywhere within the border region where this condition applies. Channels designated as "restricted" are subject to certain limitations and coordination requirements contained in the arrangement. On channels designated "restricted," licensees may not locate base stations within about 75 miles of the border, or operate mobile stations in a manner that causes interference to primary Canadian channels, within the border region where this condition applies.

The arrangement has been placed in ET Docket No. 92-100 and copies are available from the International Transcription Service at (202) 857-3800. For further information, contact Tom Mooring in the Office of Engineering and Technology (202-653-8114), or Tom Walsh (202- 418-0420) or Larry Olson (202-254-3394), both in the International Bureau.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-318

In the Matter of

Amendment of Section 73.202(b) RM-8364
Table of Allotments,
FM Broadcast Stations.
(Clinton, Kentucky)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 20, 1994; Released: November 1, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Thunderbolt Broadcasting Company, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 9 FCC Rcd 1 (1994), proposing the allotment of Channel 271C3 at Clinton, Kentucky, as that community's first local aural transmission service. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 271C3 at Clinton, Kentucky, since it would provide the community with its first local aural transmission service. An engineering analysis has determined that Channel 271C3 can be allotted to Clinton in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (7.0 miles) northeast to avoid short-spacings to Station WCMT-FM, Channel 269A, Martin, Tennessee, Station KIYS (formerly KJBR), Channel 270C, Jonesboro, Arkansas, and Station KDEX-FM, Channel 272A, Dexter, Missouri.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 16, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Clinton, Kentucky	271C3

4. The window period for filing applications will open on **December 16, 1994**, and close on **January 17, 1995**.

5. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to:

Purchase Broadcasting Co.
Post Office Box 387
Benton, Kentucky 42025
(Licensee of Station WCBL-FM)

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 271C3 at Clinton are North Latitude 36-44-30 and West Longitude 88-54-30.

We note that the coordinates for Channel 271C3 at Clinton are short-spaced to Station WCBL-FM, Channel 272A, Benton, Kentucky. However, the license for Station WCBL-FM was modified to specify operation on Channel 256A in the context of MM Docket No. 88-613. *See* 4 FCC Rcd 8707 (1989). Therefore, the issuance of an authorization for Channel 271C3 may be withheld until Station WCBL-FM is licensed on Channel 256A. We will serve the licensee of Station WCBL-FM with a copy of this *Report and Order*.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COLUMBIA LONG DISTANCE SERVICES, INC. File No. I-T-C-94-307

Application for authority to acquire and operate facilities for provision of communications services between the United States and various overseas points.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: October 20, 1994; Released: November 1, 1994

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED, that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED, that application File No. I-T-C-94-307 IS GRANTED, and Columbia Long Distance Services, Inc. (CLDS) is authorized to:

a. establish channels of communication between appropriately licensed U.S. earth stations and INTELSAT satellites, for provision of Intelsat Business Services (IBS), International Television Service and Datanet Service between the United States and the international points listed in Comsat's tariffs for the space segment of these services;

b. provide international switched services by the resale of the international switched voice services set forth in AT&T's Tariff FCC No. 1, MCI's Tariff FCC No. 1, Sprint's Tariffs FCC Nos. 1 and 2, and WorldCom's Tariff FCC No. 1 between the United States and the overseas points listed in those tariffs;

c. lease from Comsat and operate the satellite circuits specified in Appendix A (parts 1 and 2), between appropriately licensed U.S. earth stations and INTELSAT Atlantic and Pacific Ocean satellites, connecting with similar facilities between the satellites and the overseas points listed in Appendix A, furnished by its correspondents;

d. lease from PamAmerican Satellite Corp. (PAS) and operate the satellite circuits specified in Appendix B (parts 1 and 2), between appropriately licensed U.S. earth stations and the PAS-1 and PAS-4 satellites, connecting with similar circuits between the satellites and the overseas points listed in Appendix B, furnished by its correspondents;

e. lease from the Columbia/TDRSS International Satellite System (TDRSS) and operate the satellite circuits specified in Appendix C (parts 1 and 2), between appropriately licensed U.S. earth stations and the TDRS-41 and TDRS-174 satellites, connecting with similar circuits between the satellites and the overseas points listed in Appendix C, furnished by its correspondents;

f. lease and operate necessary connecting facilities in the United States;

g. lease a one-half interest in and operate any necessary overseas connecting facilities; and

h. use the facilities authorized herein to provide CLDS' regularly authorized services, including switched voice and data, and private line services, between the United States and the points specified in the Appendices, as well as to provide the services set forth in a. and b. above, between the United States and overseas points.

3. IT IS FURTHER ORDERED that neither CLDS nor any persons or companies directly or indirectly controlling or controlled by CLDS, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which CLDS or any persons or companies controlling or controlled by CLDS are parties.

4. IT IS FURTHER ORDERED that our authorization of CLDS to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and the countries listed in the Appendices -- that is, private lines which originate in the United States and terminate in one of the countries listed in the Appendices or which originate in one of the countries listed in the Appendices and terminate in the United States. In addition, CLDS may not -- and CLDS' tariff must state that CLDS' customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that one of the countries listed in in the Appendices affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559 (1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1994), *petition for reconsideration pending.*

5. IT IS FURTHER ORDERED that the applicant shall file copies of any operating agreements entered into with its foreign correspondents with the Commission within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203 and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. IT IS FURTHER ORDERED that the applicant shall file a separate Section 214 application for any additional circuits it seeks to operate via the PAS-1, PAS-4, TDRS-41 or TDRS-174 satellite.

9. IT IS FURTHER ORDERED that the number of circuits authorized herein for the provision of services via separate satellite systems is subject to limitations on the number of circuits specified under the separate systems policy and applicable consultations under Article XIV(d) of the INTELSAT Agreement.

10. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

APPENDIX A

One 64-Kbps equivalent circuit to provide service via INTELSAT to the following countries:

Part 1--INTELSAT Atlantic Ocean Region and Indian Ocean Region

Afghanistan
Algeria
Angola
Antigua
Argentina
Aruba
Ascension Island
Austria
Azerbaijan
Azores
Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Belize
Benin
Bermuda
Bhutan
Bolivia
Botswana
Brazil
British Virgin Islands
Bulgaria
Burkina Faso
Burma
Cameroon
Canada
Canary Islands
Cape Verde
Cayman Islands
Central African Republic
Chad
Chile
Colombia
Congo
Costa Rica
Curacao
Cyprus
Czech Republic
Denmark
Diego Garcia
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Estonia
Ethiopia
Finland
France
French Guiana
Gabon
Gambia
Germany
Ghana
Gibraltar
Greece
Grenada
Guantanamo Bay
Guatemala
Guinea
Guyana
Haiti
Honduras
Hungary
Iceland
India
Iran
Iraq
Ireland
Israel
Italy
Ivory Coast
Jamaica
Jordan
Kazakhstan
Kenya
Kuwait
Kyrgyzstan
Latvia

Lebanon
Lesotho
Liberia
Libya
Liechtenstein
Lithuania
Luxembourg
Madagascar
Malagasy Republic
Malawai
Mali
Malta

Martinique
Mauritania
Mauritius
Mexico
Moldova
Monaco
Morocco
Mozambique
Namibia
Nepal
Netherlands
Netherlands Antilles
Nicaragua
Niger

Nigeria
Norway
Oman
Pakistan
Panama
Paraguay
Peru
Poland
Portugal
Qatar
Romania
Russian Fed.
Rwanda
San Marino
Saudi Arabia
Senegal
Seychelles (IOR)
Sierra Leone
Slovakia
South Africa
Spain
Sri Lanka
St. Christopher-Nevis
St. Kitts
St. Lucia
St. Pierre et Miquelon
St. Vincent and
Grenadines
Sudan
Suriname
Swaziland
Sweden
Switzerland
Syria
Tajikistan
Tanzania
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Turks and Caicos Is.
Uganda
Ukraine
United Arab Emirates
United Kingdom

Uruguay
Uzbekistan
Vatican City
Venezuela
Vietnam
Yemen
Yugoslavia
Zaire
Zambia
Zimbabwe

Part 2--INTELSAT Pacific Ocean Region

American Samoa
Australia
Brunei
China (Peoples' Republic)
Christmas Islands
Cook Islands
Ebeye
Fiji Islands
French Polynesia
Hong Kong
India
Indonesia
Japan
Kiribati
Korea, Republic of
Kosrae
Majuro
Malaysia
Mariama Islamds
Nauru
Mew Caledonia

APPENDIX B

Part 1--Up to ten 64-kbps circuits for service NOT INTERCONNECTED with the public switched network:

Via PAS-1

Albania
Andorra
Anguilla
Argentina
Armenia
Aruba
Austria
Azerbaijan
Bahamas
Bahrain
Barbados
Belarus
Belgium
Bermuda
Bolivia
Botswana
Brazil
British Virgin Islands
Brunei
Bulgaria
Cayman Islands
Chile
Colombia
Costa Rica
Czech Republic
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Estonia
Faeroe Islands
France
Gambia
Georgia
Germany
Greece
Grenada
Guatamala
Haiti
Honduras
Hungary
Ireland
Italy
Jamaica
Kazakhstan
Kyrgyzstan
Latvia
Lesotho
Liberia
Lithuania
Mexico
Moldova
Monaco
Montserrat
Netherlands
Netherlands Antilles
Panama
Paraguay
Peru
Poland
Portugal
Romania
Russian Federation
San Marino
Sierra Leone
Spain
Suriname
Sweden
Switzerland
Tajikistan
Turkmenistan
Turks and Caicos
Ukraine
United Kingdom
Uruguay
Uzbekistan
Venezuela
Yugoslavia

Via PAS-4

Australia
Hong Kong
Kiribati
Nauru
New Zealand
Taiwan
Tonga
Western Samoa

Part 2--Up to six 64-kbps equivalent circuits for service INTERCONNECTED with the public switched network:

Via PAS-1

Albania
Andorra
Armenia
Azerbaijan
Bahamas
Bahrain
Belarus
Botswana
Brunei
Bulgaria
Costa Rica
Czech Republic
Djibouti
Dominica
Dominican Republic
Estonia
Faeroe Islands
Gambia
Georgia
Grenada
Hungary
Kazakhstan
Kyrgyzstan
Latvia
Lesotho
Liberia
Lithuania
Moldova
Montserrat
Netherlands Antilles
Panama
Peru
Poland
Portugal
Romania
Russian Federation
San Marino
Sierra Leone
Suriname
Tajikistan
Turkmenistan
Ukraine
United Kingdom
Uzbekistan

Via PAS-4

Australia
Hong Kong
Kiribati
Nauru
New Zealand
Taiwan
Tonga
Western Samoa

APPENDIX C

Part 1--Up to ten 64-kbps equivalent circuits for service NOT INTERCONNECTED with the public switched network:

Via TDRS-41:

Albania
Andorra
Armenia
Austria
Bahamas
Bahrain
Belarus
Belgium
Botswana
Brunei
Bulgaria
Canada
Denmark
Djibouti
Dominica
Estonia
Faeroe Islands
Finland
France
Gambia
Georgia
Germany
Grenada
Hungary
Ireland
Israel
Jamaica
Kazakhstan
Kyrgyzstan
Latvia
Lesotho
Liberia
Liechtenstein
Lithuania
Luxembourg
Mexico
Moldova
Montserrat
Netherlands
Poland
Portugal
San Marino
Sierra Leone
Suriname
Sweden
Switzerland
Tajikistan
Turkmenistan
Turkey
Ukraine
United Kingdom
Uzbekistan

Via TDRS-174

Hong Kong
Japan
Kiribati
Korea (Republic of)
Mexico
Nauru
Philippines
Taiwan
Tonga
Western Samoa

Part 2--Up to six 64-kbps equivalent circuits for service INTERCONNECTED with the Public Switched Network:

Via TDRS-41:

Albania
Andorra
Armenia
Bahrain
Belarus
Botswana
Brunei
Bulgaria
Djibouti
Dominica
Estonia
Faeroe islands
Gambia
Georgia
Germany
Grenada
Hungary
Kazakhstan
Kyrgyzstan
Latvia
Lesotho
Liberia
Lithuania
Moldova
Montserrat
Poland
San Marino
Sierra Leone
Suriname
Tajikistan
Turkmenistan
Ukraine
United Kingdom
Uzbekistan

Via TDRS-174

Hong Kong
Kiribati
Nauru
Taiwan
Tonga
Western Samoa

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICASKY CORPORATION — File No. I-T-C-94-419

Application for authority to use its Miami, Florida earth stations to provide capacity to international common carriers.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: October 20, 1994; Released: November 1, 1994

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-419 IS GRANTED, and AmericaSky Corporation is authorized to use its duly-licensed Miami, Florida international earth stations to provide earth station capacity to other common carriers.

3. IT IS FURTHER ORDERED that AmericaSky shall only provide earth station capacity for services: (a) that are consistent with the Title III authority for the earth stations being used; and (b) for which its customers have the requisite Title III authority to provide.

4. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to §203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

5. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-122

In re Application of

CALVARY EDUCATIONAL BROADCASTING NETWORK, INC. File No. BRED-891103UA

For Renewal of License
of Station KOKS(FM),
Poplar Bluff, Missouri

Appearances

Joseph E. Dunne III on behalf of Calvary Educational Broadcasting Network; and *Charles E. Dziedzic* and *Y. Paulette Laden* on behalf of Mass Media Bureau.

DECISION

Adopted: October 18, 1994; Released: November 2, 1994

By the Review Board: MARINO (Chairman) and GREENE.[1]

Board Member GREENE:

1. Before the Review Board is the *Initial Decision* of Chief Administrative Law Judge Joseph Stirmer, 8 FCC Rcd 4789 (1993), granting Calvary Educational Broadcasting Network, Inc. a one-year short-term renewal for noncommercial FM station KOKS and assessing a $10,000 forfeiture against Calvary for multiple violations of 47 CFR 73.318 (FM blanketing interference rule). The Board also has before it Exceptions to the *Initial Decision* filed by the Commission's Mass Media Bureau, Calvary's Reply Brief, Calvary's responses to two orders of the Review Board, *Memorandum Opinion and Order*, 9 FCC Rcd 575 (1994) *(MO&O I)*, and *Memorandum Opinion and Order*, 9 FCC Rcd 1834 (1994) *(MO&O II)*, and the Bureau's Comments on Calvary's first response. For the reasons stated below, the Board is affirming the one-year renewal and adjusting the forfeiture to one thousand dollars.

BACKGROUND

2. The blanketing interference controversy is fully described in the *ID* and summarized in *MO&O I*, 9 FCC Rcd at 575-77 ¶ ¶ 2-9, which are incorporated herein by reference, and need not be repeated in detail.[2] Suffice it to say that Poplar Bluff is located in an area where people had been receiving substandard television service off-the-air with good results from remotely located, widely separated television stations. When Calvary began operating from a transmitter tower located on land at the personal residence of Donald and Nina Stewart, its officers, area residents complained to both Calvary and the Commission of KOKS-caused interference to their reception of television and radio signals, particularly Channel 6, WPSD-TV, Paducah, Kentucky, which does not encompass Poplar Bluff with its Grade B contour, and Channel 8, KAIT-TV, Jonesboro, Arkansas, and to a lesser extent Channel 12, KFVS-TV, Cape Girardeau, Missouri, and Channel 15, KPOB-TV, Poplar Bluff. *ID* ¶ 12. The number of complaints was considerable, generated in part by neighbors who objected to the tower's location near their homes as well as to the deteriorated broadcast service.[3] *See ID* ¶ ¶ 10, 15.

3. Calvary's obligation to remedy these complaints is described in 47 CFR 73.318. Under this rule, Calvary is required to satisfy all complaints of blanketing interference received during a one year period starting with the commencement of program tests – at no cost to the complainant. 47 CFR 73.318(b). After the one year period, Calvary must provide technical information or assistance to complainants. 47 CFR 73.318(d). The areas assumed to be blanketed and in which Calvary's obligation applies are assumed by Commission rule to be the areas adjacent to the transmitting antenna within the station's 115 dBu contour, an area extending about 2.45 miles from the antenna site in Calvary's case. 47 CFR 73.318; *ID* ¶ ¶ 19, 40. Calvary has no obligation to resolve complaints of interference resulting from malfunctioning or mistuned receivers, improperly installed antenna systems, or the use of high gain antennas, antenna booster systems, mobile receivers, or non-RF devices. 47 CFR 73.318(b). The Commission resolved one area of uncertainty when, in a footnote to the *Hearing Designation Order* in this proceeding, it clarified that "the FM blanketing rule does not limit a licensee's responsibility to complainants residing within the Grade B contour of television stations." 7 FCC Rcd at 4037 n.4. Thus, Calvary's obligation includes curing interference to the signal of channel 6 beyond that station's Grade B contour.

4. Calvary's response to the complaints was far from effective. It misunderstood its obligation to cure blanketing interference, particularly with respect to Channel 6.[4] It disregarded the technical advice from the Commission's

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[1] Board Member Norman B. Blumenthal, who was also a member of this panel, passed away on May 11, 1994.

[2] "FM blanketing occurs when an FM station's signal strength or signal power density is of such magnitude that it causes [FM and TV] receivers near the transmitting antenna to be partially or completely blocked from receiving other broadcast stations." *FM Broadcast Station Blanketing Interference*, 57 RR 2d 126 (1984), *quoted in Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037, 4037 n.3 (1992) (*Hearing Designation Order*).

[3] The Chief, FM Branch forwarded 698 complaints by letter dated March 29, 1989, some of which apparently duplicated complaints earlier forwarded by FOB. *Id.* ¶ ¶ 40, 43. The total number Calvary dealt with reached "almost a thousand complaints." *ID* ¶ 66.

[4] Calvary's communications counsel and engineering consultant as well as the Commission's Field Operations Bureau advised that Calvary had no responsibility to cure interference beyond a station's Grade B contour, *ID* ¶ ¶ 18, 20, 86, and the Mass Media Bureau's Audio Services Division had not finally determined the scope of the Commission's blanketing rule until the Commission's policy was announced in the *Hearing Des-*

Kansas City Field Office by responding to complaints with inexpensive and ineffective filters and generally limiting the installation of filters to only one television set per household. It also failed to effectively satisfy the Audio Service Division's October 30, 1990 *Order* requiring restoration of service to as many as 220 unsatisfied complainants in the blanketing area by inadequately querying complainants about the extent of their problems, *see ID* ¶ 58, failing to recontact those it had previously but not necessarily accurately reported as cured, providing inexpensive and ineffective filters, and advising some complainants that they were responsible for buying the filters.[5] Its reports to the Commission about the results of its restoration efforts were disputed by some of the complainants. *See Hearing Designation Order,* 7 FCC Rcd at 4037 ¶ 3, 4039 ¶ 10. These problems led to the blanketing interference and misrepresentation/lack of candor issues tried below. *See Id.* at 4041.

BLANKETING INTERFERENCE

5. The crux of the blanketing interference problem has been Calvary's admitted lack of technical and economic resources for an effective response. Calvary was completely unaware of the requirement in 47 CFR 73.318 when it built KOKS and completely unprepared to deal with it. But, as the Board emphasized in *MO&O I,* 9 FCC Rcd at 577 ¶ 10, compliance with 47 CFR 73.318 is required, including compliance with respect to Channel 6, and financial inability is an unacceptable defense. The Board agreed with the concern expressed in Bureau Brief at page i that the record below provided no indication that Calvary would comply with the blanketing rule insofar as the Bureau regards compliance. The Board said:

> Unless and until Calvary demonstrates that it is technically and financially qualified (*see* 47 U.S.C. § 308(b)), the Board sees little purpose in granting a renewal, hence risking the perpetuation of continued noncompliance and yet further enforcement proceedings initiated for an obviously unsatisfied Mass Media Bureau.

MO&O I, 9 FCC Rcd at 577 ¶ 10 (footnote omitted). Thus, while acknowledging the difficulties involved in strict compliance because of the distance and separation of the affected stations in this case, as shown in reports from the Commission's Kansas City Field Office engineers, the Board was constrained to require from Calvary:

> (1) a written showing of the measures it proposes to take to come into full compliance with § 73.318, including a detailed time schedule of proposed actions; and (2) a written showing of the licensee's finances sufficient to demonstrate that it possesses the resources necessary to achieve full compliance with § 73.318.

Id ¶ 11.

6. Calvary responded to *MO&O I* on March 7, 1994. It conceded the shortage of funds and its ignorance of the blanketing rule from the outset and emphasized its newfound understanding of the relationship of compliance to its stewardship of its supporters' contributions. Response at 16; *MO&O II,* 9 FCC Rcd at 1834-35 ¶ 5. Also:

> Calvary has here submitted several exhibits that propose the equipment it might require for its "Compliance Program," and the engineering assistance it hopes to employ to effect that program. Response at 1-4. Its "best" estimate of the cost of such a program is $45,642.50. *Id.,* at 4. Additionally, it claims it will mail to "[e]very complainant noted as being within the blanketing contour in the Commission's October, 1990 letter" its own new missive asking as to any KOKS-caused interference and offering to resolve such, to the degree required by the rule. *See id.,* at 7-9. "Implementing the [KOKS] Compliance Program will take at least 120 days, and that will be rushing it." Response at 12.
>
> As for the financing of the above-described program, Calvary proffers a bank letter of February 25, 1994 agreeing to increase an existing $18,233 Stewart loan by an additional $50,000 (altogether $68,233), provided that (1) the Stewarts collateralize any such loan with a deed of trust on the real estate upon which KOKS is located and a second deed of trust on their house, as well as on all KOKS equipment; and (2) the Stewarts also show proof of Title Insurance and the absence of any liens on the foregoing assets. *See* Response, Exh. E (Peoples Bank of Wayne County). In that regard, it is asserted that "Calvary has no current obligations in excess of $500." Response at 4; the Stewarts hope to pay off the loan(s) with listener donations, *see id.,* at 16.

MO&O II at 1835 ¶ ¶ 6-7 (footnote omitted).

7. The Bureau conceded that "Calvary's technical proposals to address blanketing interference caused by Station KOKS(FM) appear, on their face, technically sufficient." Bureau Comments at 2. It took a different view of Calvary's financial proposal, arguing the inadequacy of Calvary's cost estimates in light of the possible need to eliminate interference caused to channel 6 in more homes than Calvary predicted, and arguing the inadequacy of Calvary's provisions for reimbursing complainants who had addressed the KOKS interference at their own expense. Finally, even if Calvary's current obligations are insignificant, the Bureau questioned whether it can secure the needed funds in light of substantial indebtedness accumulated by the Stewarts' former egg-laying business and, thus, the Stewarts personally. The Stewarts have been the moving force behind Calvary, and they proposed to secure the bank loan with the tower site and personal residence they had deeded to Calvary. The Bureau submitted docu-

ignation Order starting this proceeding. *ID* ¶ ¶ 56, 108. For this reason, the Board agreed with the Presiding Officer that Calvary cannot be faulted for failing to correct blanketing problems affecting Channel 6, which accounted for as many as 60% of the complaints against Calvary. *MO&O I,* 9 FCC Rcd at 576 ¶ 6 and n.5.

[5] Calvary was also ordered to provide technical information and assistance to both people outside the protected area and people who complained after the one-year period. *Id.* ¶ 57.

mentation showing over $300,000 in unpaid federal tax assessments and substantial additional unpaid judgments and state tax liens.

8. In light of this, the Board demanded a reply from Calvary

> that fully answers the three basic matters interjected by the Bureau. Calvary must reply, directly and unambiguously, to the questions of whether (1) its "Compliance Program" is intended to satisfy *all* covered first-year complaints, including those related to TV Channel 6; (2) its "Program" is intended to reimburse those complainants who were entitled to such under § 73.318; and (3) its estimate of $45,642 was intended to encompass those two items, and confirm where in its submitted "Program" these were delineated (if they were). Further, inasmuch as Calvary's entire "Program," as here presented, depends on a $50,000 increase on an extant bank loan which, in turn, is contingent on the absence of liens on *all* of the specified Stewart assets, Calvary's reply must include (1) evidence of the status of each and every lien and judgment appending Bureau Comments, Attachment B (as well as any other similar potential encumbrances); and (2) a written declaration from Calvary's proposed lender listing -- specifically by claimant, date and dollar amount -- any recorded liens and judgments and stipulating that any such claims would have no impact whatever on the immediate $50,000 loan to Calvary.

MO&O II at 1836 ¶ 9 (footnote omitted).[6] The Board further explained that no financial issue has been added or tried, in spite of Calvary's multiple admissions that it lacked sufficient finances for compliance. Rather,

> "[o]ur sole instant purpose is to determine . . . whether a short-term renewal (such as that proposed in the Chief ALJ's *I.D.)* would likely result in expeditious compliance with the Commission's technical rules, all of the unique circumstances here considered. Inasmuch as Calvary's prime defense for noncompliance is, and from 1988 forward has been, its lack of finances, then the *technical* issue inextricably turns on the licensee's present fiscal resources."

Id.

9. Calvary submitted the Verified Statement of Nina Stewart, Calvary's Secretary-Treasurer, on May 9, 1994. There Mrs. Stewart stated: (1) "Calvary intends to cure all complaints of blanketing interference received by the FCC during the first year of operation, including any of those which relate to blanketing interference to channel 6. . . . Now that the Commission has made its obligation to cure channel 6 blanketing interference clear we will do what is necessary to comply with the Commission's requirements." Verified Statement ¶ 1. This was shown, she said by the unqualified commitment to cure the blanketing interference and the equipment proposed, including filters with preamps and antenna rotors. (2) "Calvary will reimburse those entitled to reimbursement under §73.318." Verified Statement ¶ 2. Although not explicit in the earlier Response, Calvary stated it had reimbursed two complainants, would reimburse a third if she could be found, and would state its intent to pay for any work done to cure the problem in letters to complainants within the blanketing area. This reimbursement would come from the same funds set aside for the Compliance Program. *Id.*

10. To establish its ability to finance its compliance program, Calvary showed: (1) a $48,000 certificate of deposit in Calvary's name with Peoples Bank dated April 29, 1994 ; and (2) a line of credit in Calvary's name for $48,000 from Peoples Bank, also dated April 29, 1994, with a maturity date of April 29, 1995. Verified Statement, Attachment B. This is secured by the certificate of deposit. Advances under the line of credit are to be given "per instructions of loan officer," *id.*, which means, according to Mrs. Stewart, that "[a] Bank officer will have to approve any request for funds based on a showing by Calvary that the funds will be used for implementation of the Compliance Program. We structured the loan this way to assure the Commission that the funds would be available and that whatever funds were available would be used strictly to fund the Compliance Program." Verified Statement ¶ 5. Angela Thurston, Co-President of Peoples Bank said in a notarized statement on April 29, 1994:

> Peoples Bank of Wayne County is aware of Federal Liens and Judgments which are filed against Donald W. Stewart. Calvary Educational Broadcasting Network is not financially responsible for any of these liens or judgements, according to a title record search prepared for Peoples Bank of Wayne County by Butler County Abstract & Title Company, Inc., Poplar Bluff, MO dated 03-14-94.

Verified Statement, Attachment C. Although Ms. Thurston's statement referred only to debts of Donald Stewart, Mrs. Stewart claims she gave Ms. Thurston copies of all the documents attached to the Bureau's Comments. Verified Statement ¶ 4. In every instance in which Mrs. Stewart is named, Donald Stewart is also named. As also required by the Board's *MO&O II*, Mrs. Stewart addressed the status of the liens and judgments shown in the Bureau's Comments, pointing out that none of them are against Calvary. Verified Statement ¶ 7. They have to do with the egg-laying business sold on April 1, 1987. *Id.* ¶ 8. The Stewarts "are in no way responsible for any debts of the corporation after that date," *id.*, which includes the majority of the liens and judgments shown in the Bureau Comments. Two of the other judgments are shown to be satisfied; one was thought to have been settled with a property sale; the Stewarts were not aware of three others until receiving the Bureau's Comments and dispute their responsibility in light of the sale of their business; and one federal tax lien is the subject of discussions with the Internal Revenue Service.

11. *Discussion.* In pursuing additional information from Calvary, the Board has been concerned about whether Calvary has the technical and financial wherewithal to comply with the blanketing interference rule so that any renewal conditioned on compliance would not be an

[6] The Board did not ask for further reply from the Bureau.

exercise in futility or an improvident wasting of Commission resources. We are satisfied -- finally -- that Calvary understands its obligation under 47 CFR 73.318 and has developed a technical proposal likely to be successful, even under the difficult conditions present within the area where Calvary must cure complaints of blanketing interference. The Bureau concedes the facial adequacy of Calvary's technical proposal to achieve compliance. Bureau Comments at 1, 2.

12. Calvary and the Bureau differ, however, about how long Calvary should provide a cure for any intractable blanketing interference problems by paying for basic cable service if reception cannot otherwise be restored to the pre-KOKS quality. Calvary proposes to turn to cable service in the most difficult cases, and, if it does, it proposes to pay for installation and one year of basic service. Calvary Response at 10. The Bureau, while skeptical that a cable connection will completely eliminate blanketing interference, Bureau Comments at 3-4, recommends that Calvary be required to continue its offer to pay for cable service "until over the air interference no longer exists." *Id.* at 6. The Board agrees with the Bureau that it should accept Calvary's offer to pay for cable service where blanketing interference cannot otherwise be cured. However, rather than specify any length of time, we will tie this commitment to the duration of Calvary's operation under the license renewal ordered herein, including any period during which the license continues in effect under the Administrative Procedure Act, 5 U.S.C. § 558(c), pending action on a timely filed renewal application. Any need for continuing cable service to complainants can be reviewed at the next renewal along with Calvary's overall compliance with the blanketing rule.

13. We are also satisfied that Calvary -- finally -- has demonstrated the financial resources to carry out the described Compliance Program. It now has a secured line of credit from an informed local bank for more than it estimates its Compliance Program will cost, which it can access only for the Compliance Program. This answers the Bureau's and the Board's earlier concern that the bank on whom Calvary was relying for financing the Compliance Program might not be willing to make funds available once informed of the Stewarts' potential or actual liabilities. *See Liberty Productions, A Limited Partnership*, 8 FCC Rcd 4264, 4265 ¶ 7 & n.7 (1993) (no factual question about financial qualifications where bank stated awareness of liens and willingness to make loan); *compare Eve Ackerman*, 8 FCC Rcd 4205, 4206 n.9 (1993) (citing cases where financial issue added because of liens and judgments of major amounts) (subsequent history omitted). Although the Bureau questions whether Calvary has underestimated the cost of the Compliance Program by underestimating the number of complainants who will want assistance, it has not offered an alternative estimate. Calvary's estimate assumes that it will install a complete system at the home of every complainant who wanted a visit in 1991, about half of the affected homes in the blanketing contour. According to Calvary, "[T]his sort of complete installation should be necessary only in the most difficult situations. In most homes, a combination of filters in conjunction with preamps and/or antenna rotors should be sufficient to cure blanketing interference problems." Calvary Response at 1-2. Calvary's conservative equipment estimate, along with the two thousand dollar cushion in its line of credit, provides a cushion should more complainants than estimated accept Calvary's offer for a blanketing interference cure.

MISREPRESENTATION

14. Although Calvary has satisfied the concern about its ability to come into compliance with 47 CFR 73.318, the matter does not end there, for the Bureau also took exception to the Presiding Officer's resolution of the misrepresentation/lack of candor issue in Calvary's favor, an exception acknowledged but not addressed in the Board's *MO&O I* and *MO&O II*. The issue arose out of Calvary's representations in its reports to the Commission that service to various complainants had been restored when it had not installed filters on all the television sets in the homes visited, attempted to restore radio reception, or even considered portable television sets, and many complainants reported to have been satisfied said they were not. *HDO* at 4040 ¶ ¶ 13, 14.

15. The Bureau specifically challenges the Presiding Officer's conclusions about the truthfulness or candor of Calvary's reports about its efforts regarding seven complainants as contrary to the record evidence. The subject complainants are: Mary Wynn, Joanne Gray, Sandra Durbin, Doris Smith, Edward Hodgins, and William and Jean Hillis. It argues the *ID* should have found that Calvary submitted incomplete and misleading information by failing to report its lack of effort to address interference to radios and, in many instances, to more than one television. The Bureau also argues that the *ID* should have found that Calvary principal Donald Stewart lied during his testimony.

16. Two principals must guide our analysis here. The first is the importance of the "'trait of truthfulness'" to both an applicant's basic qualifications for a license and the integrity of the Commission's regulatory process. *Character Policy Statement*, 102 FCC 2d 1179, 1210 (1986). "[T]he agency's demand for unalloyed candor is its *sine qua non* for licenseeship, because it is primarily upon a licensee's uninvestigated representations that this agency must routinely rely." *Tri-State Broadcasting Co., Inc.*, 5 FCC Rcd 1156, 1173 ¶ 114 (Rev. Bd. 1990); *accord, Nick J. Chaconas*, 28 FCC 2d 231, 233 (1971). Whether less than fully accurate information is disqualifying, however, depends on whether a willful intent to deceive is found. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). Inaccurate information resulting from carelessness, exaggeration, faulty recollection, or merely falling short of the punctilio normally required by the Commission falls short of the deceptive intent normally required for disqualification. *See MCI Telecommunications Corp.* 3 FCC Rcd 509, 512 (1988) ("'bare existence of a mistake'" without indication of deception does not elevate a mistake to an intentional misrepresentation), citing *Kaye-Smith Enterprises*, 71 FCC 2d 1402, 1415 (1979); *Standard Broadcasting, Inc.*, 7 FCC Rcd 8571, 8574 ¶ 11 (Rev. Bd. 1992).

17. The second guiding principal is the deference owed to the credibility findings of the presiding officer, who has observed the testimony of the witnesses first hand, where substantial evidence supports these findings. *TeleSTAR, Inc.*, 2 FCC Rcd 5, 12-13 (Rev. Bd. 1987), *review granted in part and denied in part*, 3 FCC Rcd 2860 (1988), *aff'd by judgment*, 886 F.2d 442 (D.C. Cir. 1989) (Table). "While the Board is not absolutely bound by these findings, it may not upset them unless its reversal is sup-

ported by substantial evidence." *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1141 (D.C. Cir. 1985) (citations and footnote omitted). On the other hand, the Board must make a fair estimate of the relevant evidence and not merely rubber stamp the findings of the presiding officer. *Sun Over Jupiter Broadcasting, Inc.*, 8 FCC Rcd 8206, 8208 ¶ 7 (Rev. Bd. 1993), citing generally to *Allentown Broadcasting Corp. v. FCC*, 349 U.S. 358 (1955); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 489-90 (1951) (Frankfurter, J.); *Lorain Journal Co. v. FCC*, 351 F.2d 824, 828 (D.C. Cir. 1965), *cert. denied sub nom. WWIZ, Inc. v. FCC*, 383 U.S. 967, *rehearing denied*, 384 U.S. 947 (1966).

18. *Durbin, Wynn and Gray Complaints.* For the first several months after KOKS began operating, the Commission's Kansas City Field Office received complaints about KOKS-caused interference and forwarded them to Calvary with a request that Calvary report back on the status of the complaints. In response Calvary filed several reports, including a report addressing the complaint from Mary Wynn on January 24, 1989; one addressing the complaint from Joanne Gray on February 24, 1989; and ones addressing the complaint from Sandra Durbin on December 6, 1988 and January 24, February 10 and February 24, 1989.[7] On March 15, 1989, the Field Office referred the matter to the Mass Media Bureau, which sent Calvary copies of 698 complaints, including some earlier sent by the Field Office, and ordered a report about each complaint that identified the type and location of the interference, described the assistance provided by KOKS and the dates, and answered whether the interference had been resolved. *ID* ¶ 40.[8] Calvary responded on September 22, 1989 with a report to Dennis Williams, Chief of the Bureau's FM Branch, addressing, *inter alia*, the Durbin, Wynn, and Gray complaints but, the Bureau argues, failing to make clear that it had not resolved these complaints.

19. The Presiding Officer found that Calvary's "representations cannot be viewed as deliberate misrepresentations of fact designed to mislead the Commission." *ID.* ¶ 112. The Bureau excepts, arguing that Calvary knew, at least when it filed its September 22, 1989 report,[9] it had not resolved the problems of Mrs. Wynn, Mrs. Gray and Ms. Durbin. "Nevertheless," the Bureau argues, "Calvary willfully misrepresented to the Commission that it had resolved the complaints of Mrs. Wynn, Mrs. Gray and Ms. Durbin and never bothered to correctly inform the Commission despite receipt of additional complaints from each of them." Bureau Brief at 12-13.

20. Whether Calvary misrepresented or was otherwise lacking in candor depends on whether it knowingly submitted false or incomplete reports or otherwise failed to keep the Commission informed of the changed status of blanketing interference problems with intent to deceive the Commission. Like the accuracy of Calvary's reporting, Calvary's intent or state of mind is a factual question, which can be found from evidence affording a reasonable inference. *See California Public Broadcasting Forum*, 752 F.2d 670, 679 (D.C. Cir. 1985). For example, fraudulent intent can be found from "'the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity.'" *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991), quoting from *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980).

21. The Bureau makes several important points. Mrs. Stewart read the complaints received from the Commission and gave counsel the information used in preparing its reports to the Commission. *ID* ¶ 48. The complaints received after Calvary's January and February reports were clear in expressing dissatisfaction with television reception of signals in addition to that of channel 6. After looking at Calvary's reports, the Commission concluded that problems other than with channel 6 had been resolved. However, from our review of all the facts as per the requirements of *Character Policy Statement*, 102 FCC 2d at 1211, we find the Presiding Officer's conclusion, that Calvary's failure to address these complaints was not due to any deceptive intent on Calvary's part, is supported by a preponderance of the record evidence.

22. Mrs. Stewart was dealing with what eventually totalled almost a thousand complaints the first year, 698 of which were attached to the FM Branch Chief's letter that Calvary answered in its September 22, 1989 report. *ID* ¶ ¶ 40, 66. The complaints came in batches which overlapped so that Mrs. Stewart was unsure whether she had dealt with some of the complaints once or twice. Tr. 565-66, 614. From calls received at the station, visits to the station from people picking up free filters, and conversations during her visits to homes, Mrs. Stewart understood the primary concern of a majority of complainants to be channel 6 reception, even though many complaint forms showed additional problems. Tr. 559-61, 573, 577. She also had reason to suspect the accuracy of some of the complaints, not only because they differed from what Mrs. Stewart understood to be the signers' real complaints, but also because one woman had told her she had no problem but had signed a complaint to satisfy Mrs. Smith and Mrs. Hillis, and someone with a satellite receiver told her he had not circled two channels shown to be receiving interference in his complaint. *ID* ¶ 48; tr. 572.[10] With only three full time employees at the station, Mrs. Stewart bore the brunt of the responses, spending twenty to thirty hours a week on the problem. Tr. 567, 570. No one at the station helped her and she could not

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[7] The reports are included in the record as the following exhibits:

December 6, 1988 report -- Bureau Exh. 15;

January 24, 1989 report -- Bureau Exh. 17;

February 10, 1989 report -- Bureau Exh. 18;

February 24, 1989 report -- Bureau Exh. 19;

September 22, 1989 reort -- Bureau Exh. 21.

[8] This letter was sent to an old address for Calvary, and Calvary did not receive it until sometime later, perhaps June 1989. Tr. 467.

[9] Because complaints went through Mrs. Smith and Mrs. Hillis and the Commission before being sent to Calvary, complaints signed a few days after a home visit and contradictory to Calvary's view of the results of the home visit usually would not reach Calvary for two to three weeks after they were signed. Tr. 436-37.

[10] During testimony Mrs. Stewart recalled this person as a man, possibly a Mr. Greene. Tr. 572. Bureau Exh. 19 at 76 is a copy of a complaint from Barbara L. Green showing interference to channels 6 and 8 and to radio. Mrs. Stewart's notes, which are superimposed on the complaint form, state that Ms.

afford to hire help in 1989. Tr. 621-22, 630. She did not review complaint forms before visiting homes. *ID* ¶ 48. When she visited homes, she did not change the KOKS power to see the effects or talk with the residents about what reception had been like before KOKS began operating, and she had no personal experience with off-the-air reception before KOKS began operating. Tr. 588-89; *cf.* tr. 507. She addressed only problems raised during the visits other than the channel 6 problem for which she erroneously thought she was not responsible. Her reports to the Commission were based on what she saw during the visits. Tr. 553. She explained, "At the point when I was there, they were satisfied. The ones that I reported satisfied, when I was there I reported it as it was at that time, Your Honor." *Id.* Calvary's submissions were voluminous, including the contemporaneous notes made during the home visits. *ID* ¶ 115 n. 22. The quality of reception appeared to vary, depending in part on atmospheric conditions,[11] and filters (and other remedies for blanketing interference) could diminish the strength of already weak off-the-air signals, so that Commission engineers investigating the situation perceived slight or negligible improvement even with KOKS off the air. *ID* ¶ ¶ 106, 107.

23. Sandra Durbin's initial written complaint was of interference generally to television and radio, but it identified no specific channels. *See* Bureau Exh. 5 at 7. After receiving the complaint, Calvary reported that Ms. Durbin was among a group of complainants receiving interference only to channel 6. Bureau Exh. 15 at 2, Exh. 17 at 3, 84.[12] After Mrs. Stewart visited the Durbin home, however, Calvary listed Ms. Durbin among those whose problem had been cured with the installation of a filter. Bureau Exh. 19 at 2. According to Mrs. Stewart's contemporaneous notes attached to this report, the filter installed on February 21 "improved reception very much." *Id.* at 62. In its September 22, 1989 report, Calvary said only that, "On a visit to Ms. Durbin's home, blanketing interference was observed on Channels 8 and 12. A filter was installed to improve reception." Bureau Exh. 21 at 9. Ms. Durbin acknowledged that the filter seemed to improve reception, but only "for a short time." Bureau Exh. 5 at 11.[13] "After two weeks, I removed the filter because it seemed to make reception worse. Sometime later, though not right away, I called Nina Stewart and reported this." Bureau Exh. 5 at 3. In each of her post-visit documents, Ms. Durbin complained of interference to four television channels, *see* Bureau Exh. 7 at 9, 11, 15, 17, but neither her post-visit dissatisfaction nor her complaint that the filter's usefulness was short-lived was acknowledged in Calvary's September 22 report or later. *See generally ID* ¶ ¶ 25, 34.

24. In finding no misrepresentation on Ms. Durbin's part in the September 22 report, the Presiding Officer observed that Calvary merely reported what its representative had done, *i.e.*, "that a filter was installed to improve reception to Channels 8 and 12." *ID* ¶ 112. He found "understandable" Mrs. Stewart's explanation that she had "just missed picking up on" some complaints, including Ms. Durbin's, tr. 553-54, "in view of the volume of complaints received by KOKS." *ID* ¶ 112n. 21. The Bureau argues that the last complaints Calvary should have overlooked were those from people like Ms. Durbin who were experiencing blanketing interference, but this does not persuade us that the Presiding Officer's acceptance of Mrs. Stewart's explanation for her oversight is in error. The Board also finds no misrepresentation in Calvary's reporting of its initial pre-visit view that Ms. Durbin's problem was only with channel 6, for after its visit Calvary reported its observation of interference to two channels. The Bureau has pointed to nothing other than the reports before and after Calvary's visit to Ms. Durbin to support its mistrustful view of Calvary's intent and has not taken into account the sequence of events informing Calvary's understanding of the Durbin problem, which Calvary reported. That Calvary's understanding evolved over time does not establish deceitful intent.

25. Mrs. Wynn's initial complaint listed specific channels that were receiving interference, although we cannot tell from either copy in the record whether the copy sent to Calvary showed all of the affected channels.[14] *See* Bureau Exh. 10 at 7, Exh. 17 at 54. Mrs. Stewart responded by visiting the Wynn home and installing a string filter.[15] As a result, "[s]he was receiving everything except Channel 6. . . . And so I turned it in as her complaint was resolved, because she was receiving all of her channels except Channel 6." Tr. 438. When reporting to the Commission, Calvary listed Mrs. Wynn among those whose complaints had been resolved -- but also attached Mrs. Stewart's notes showing Mrs. Wynn's dissatisfaction. Bureau Exh. 17 at 2, 54. Calvary described that visit in its September 22, 1989 report:

> Ms. Wynn complained of interference on Channels 6, 8, 12 and 15. KOKS personnel visited the home in January and did not see any evidence of any blanketing or other interference on any channel. A filter was installed on Mrs. Wynn's set in January

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Green told her she had signed the form without circling any channels because she had no interference. According to the notes, Ms. Green was amenable to telling this to the FCC.

[11] This may help to explain why the complaints from Mrs. Wynn and Mrs. Gray varied over time. *See* paragraphs 20 and 21, *supra*.

[12] Mrs. Stewart's notes about Ms. Durbin included among Miscellaneous Responses recite only that "CHANNEL 6 IS OUT called 11-10-88." Bureau Exh. 17 at 84.

[13] Ms. Durbin said in her June 7, 1989 petition that the filter "seemed to improve 8 & 15," Bureau Exh. 3 at 11, but recalled in her 1992 written testimony that "the filter seemed to sharpen the picture on Channels 12 and 15, and I told her as much. There was no effect on Channels 6 or 8. . . . Bureau Exh. 3 at 3. In light of the fact that Calvary and Ms. Durbin each reported improvements on two channels at the time of the visit, the Board draws no adverse conclusions from the inconsistencies among their various recollections as to which two channels these were.

[14] Complaints were collected and sent to the Commission by Mrs. Smith and Mrs. Hillis, then sent to Calvary by the Commission. Tr. 429, 464. Mrs. Smith kept the originals, Bureau Exh. 2 at 3, and Calvary received copies or copies of copies from the Commission. Tr. 447. Mrs. Smith and Mrs. Hillis were cautioned by Larry D. Eads, Chief, Audio Services Division, Mass Media Bureau, to retain the original complaints until the Commission has made a final determination in this matter. Bureau Exh. 25 at 4 n. 7.

[15] String filters were made by the KOKS engineer, who cut wire to a length appropriate for filtering the KOKS frequency and added a connector. Tr. 563-64. These turned out not to be very successful.

and improved reception on all channels except channel 6. Mrs. Wynn was not satisfied with this result.

Bureau Exh. 21 at 19;[16] tr. 442. Mrs. Stewart explained that she had installed the filter in spite of the lack of evidence of blanketing interference because "[t]here was a lot of junk floating around out there, sir, and a filter will take out any kind of stuff. And you will see improvement on channels when you install a filter just simply because it does take out stuff that is in the air."[17] Tr. 443. Mrs. Stewart believed Mrs. Wynn was dissatisfied with this result "[b]ecause Channel 6 did not come in." Tr. 443.

26. After additional complaints, Mrs. Stewart made another visit to the Wynn household and installed what she called an O-75 filter on the television and a choke filter on a radio. Tr. 439. Calvary said in its September 22 report, "Reception on channels 8, 12 and 15 was very good. Channel 6 still did not come in, and Mrs. Wynn remained unsatisfied." Bureau Exh. 21 at 19, 81. According to Mrs. Stewart, Mrs. Wynn's primary complaint was about channel 6 during the first visit and additionally included channels 8 and 12 during the second visit. Tr. 610-11. Mrs. Wynn consistently complained in writing of interference to channels 6 and 8 but less consistently complained of interference to channels 12 and 15. *See* Bureau Exh. 10, Attach. 1-4. Mrs. Stewart thought Mrs. Wynn ultimately had a good picture on channel 6. "It had just a faint snow, but I thought it was a good picture for Channel 6, what I had saw of Channel 6." Tr. 613. The choke filter was installed on the radio on the advice of Radio Shack employees who told her that interference was coming in through the electrical cord. Tr. 445. Mrs. Wynn's radio problem improved over time and she did not complain about that during Mrs. Stewart's 1991 visit. Tr. 659. Mrs. Wynn's post-visit dissatisfaction was not acknowledged in Calvary's September 22 report or later. *See generally ID* ¶ ¶ 36, 46.

27. The Presiding Officer found that, "contrary to the Bureau's argument, Calvary did not report that it had cured or resolved Wynn's problem. Indeed, it clearly reported that Wynn was dissatisfied." *ID* ¶ 112. Thus, he found no intent to mislead. The Bureau excepts, arguing that Calvary's reporting was misleading because Mrs. Wynn remained unsatisfied after both visits and Calvary failed to report this. We disagree. We read Calvary's September 22, 1989 report of the fact that Mrs. Stewart made a second visit to the Wynn household as an acknowledgment that Mrs. Wynn had continued to complain after Mrs. Stewart had installed the string filter, not as a deceptive hiding of Mrs. Wynn's continuing dissatisfaction. Mrs. Wynn was not satisfied by either visit and Calvary reported this, although we recognize that poor channel 6 reception was reported as the main concern. *See* Bureau Exh. 17 at 54, Exh. 21 at 19, 81.

28. The first complaint from Mrs. Gray identified interference to television channels 6 and 8 and to radio and was expanded during a telephone call to include channel 12. Bureau Exh. 7 at 7; Bureau Exh. 19 at 66. After Mrs. Stewart visited the Gray household, Calvary reported that the Gray complaint was cured by the installation of a filter, Bureau Exh. 19 at 2, 66, a view not necessarily inconsistent with Mrs. Gray's questionnaire response two years later that the KOKS representative admitted the filter "didn't help *much*," Bureau Exh. 7 at 14 (emphasis added), a point Mrs. Gray repeated in her subsequent written testimony. *Id.* at 3. Calvary's September 22, 1989 report stated, "Blanketing interference was observed on Channels 6 and 8. A filter was installed that cured the blanketing interference on channel 8." Mrs. Gray repeated her complaint about channel 12 after the visit, Bureau Exh. 19 at 66, Exh. 7 at 9,[18] and Mrs. Stewart later testified, "[T]he reception was restored on all channels except Channel 6." Tr. 446, 448. Mrs. Gray's post-visit dissatisfaction was not acknowledged in Calvary's September 22 report or later. *See generally ID* ¶ ¶ 36, 45.

29. The Presiding Officer found that "there was no claim that the blanketing interference to Channel 6 was satisfactorily resolved." *ID* ¶ 112. Thus, in this situation as well as those involving Ms. Durbin and Mrs. Wynn, he found no intentional deceit. Although the Bureau argues that Calvary had claimed it had cured the Gray problem, the Presiding Officer's conclusion is supported by the record. Calvary reported its representative's observations in its September 22, 1989 report and claimed nothing more. That the Commission may have drawn broader conclusions about the results of Calvary's efforts than Calvary reported does not establish intentional deceit on Calvary's part.

30. An important element to the Presiding Officer's analysis is his acceptance of Mrs. Stewart's testimony about how she responded to complaints and about the basis for her reports. *See ID* ¶ 115. Although not specifically called credibility findings by the Presiding Officer, his acceptance of Mrs. Stewart's beliefs about what she was doing and reporting is entitled to deference if supported by substantial evidence. Apart from pointing out that Mrs. Stewart and the complainants had different views of the results of Calvary's efforts, the Bureau has not shown why accepting Mrs. Stewart's explanation – which does not require rejection of the complainants views of interference from KOKS – is unsupported by substantial evidence. Our review of the record shows substantial evidence for the Presiding Officer's acceptance of Mrs. Stewart's testimony, and therefore Calvary's explanations, as credible.

31. Important to the Board's analysis of the Bureau's exceptions is Calvary's reliance in its reports on its own observations at complainants' homes. As the Presiding Officer found, "whether television reception was improved or blanketing interference was cured or resolved, in many instances constituted a matter of judgment based on subjective perceptions. This is particularly true in this case because of the poor quality of the television signals to begin with." *ID* ¶ 115 (footnote omitted). Calvary is at fault for not using expert help from the beginning and for

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[16] Mrs. Stewart corrected the statement about blanketing interference on cross examination to mean she saw no evidence of interference on any channel *except* channel 6.

[17] Mrs. Stewart's understanding of the characteristics of blanketing interference came from a telephone conversation with a Commission representative in the Kansas City Field Office. Tr. 420.

[18] Mrs. Gray also complained about channel 15 in her June 7, 1989 petition, but said in her March 18, 1991 questionnaire that channel 15 "is clear most of the time." Bureau Exh. 7 at 12, 14.

not paying sufficient attention to follow-up complaints from Ms. Durbin, Mrs. Gray and Mrs. Wynn, but under all the circumstances here -- the large number of complaints, the subjective evaluation of signal quality, the voluminous contemporaneous notes submitted to the Commission, and Calvary's failure to pay more attention to the written complaints before making home visits or preparing its September 21, 1989 report -- we do not find that the Presiding Officer erred in concluding that Calvary's reports, even though imperfect, were not intended to deceive the Commission.

32. Nor do we find Calvary's failure to follow up its reports with *errata* reporting additional complaints to be lacking in candor. As Calvary argues in its Reply Brief at 6, it received the complaints from those at the Commission who were evaluating its efforts. It could hardly intend to deceive the Commission by not telling the Field Office and the Bureau what the Field Office and the Bureau had told it! This distinguishes Calvary's situation from situations such as *Capitol City Broadcasting*, 8 FCC Rcd 1726, 1735-36 ¶ 32 (Rev. Bd.), *review denied*, 8 FCC Rcd 8478 (1993), where the fact that ownership information was available in Commission files did not exonerate an applicant from a finding of fraudulent intent for failing to disclose that information in its application; the information was not automatically available for the record in the proceeding and was not likely to come to the decisionmaker's attention without disclosure by a party.

33. *Smith Complaints.* The Bureau also complains that the Presiding Officer erred in failing to find that Calvary lacked candor in its reports about its efforts to cure blanketing interference for the Smiths. The Presiding Officer focused in *ID* ¶ 113 on Calvary's assessment that Mrs. Smith was uncooperative in KOKS' efforts to cure the interference problem. According to the Bureau, the point is that Calvary did not tell the Commission that the filter it had installed on Mrs. Smith's television set did not work when it tried to blame Mrs. Smith for failing to cooperate. The Bureau also argues that, at the same time Calvary was complaining of Mrs. Smith's lack of cooperation, Mrs. Stewart was telling Mrs. Smith that she would call when a suitable filter arrived. *Id.*

34. According to both Mrs. Smith and Mr. Stewart, Mr. Stewart visited the Smith home in November 1988 and tried a string filter, which did not work on either of two television sets. Tr. 737, 911-12. Mrs. Smith says that Mr. Stewart left saying something to the effect of, "'Well, I don't know what's wrong. I'll be back,' or something of that nature, and he left. You know, 'I'll discuss this with an engineer,' or, 'I'll, I'll see what I can do," or something, and, and he left, and there were no unfriendly words." Tr. 912. She added that she asked about Calvary's plans to expand its hours of operation and increase its power. "And he said, 'Yes.' And I said, 'Without clearing up this interference problem?' And he said, 'Yes.' And that's when I looked straight at him and I said, 'You'll have a fight on your hands.'" Tr. 912-13.

35. Calvary said in its December 6, 1989 report to Karen Raines, Bureau Exh. 15 at 2-3:

> *Miscellaneous Situations.* There are roughly six complaints that, for one reason or another, have not yet been resolved by KOKS personnel. . . .
>
> *Paul and Doris Smith.* Since the Smiths live very close to the station's antenna site, the possibility of blanketing interference is here especially severe. Mrs. Smith began to complain about interference on channels 6 and 12. KOKS representatives visited the Smiths and provided a filter for their television set. When the Smiths' complaints continued a KOKS representative called again on November 29 and asked permission to install a filter on their outside antenna. Mrs. Smith refused, stating that the Smiths were installing a new antenna and that she would call the station to let them know when installation was completed so that KOKS personnel could install a new filter. Mrs. Smith has subsequently called the station and informed KOKS that the Smiths are not changing their antenna, but refused KOKS personnel access to the Smiths' rooftop antenna to install a filter because the Smiths' did not wish KOKS personnel to "walk on their roof."
>
> [Calvary] will attempt to do all within its power to resolve the Smiths' legitimate interference complaints, but it can do little without cooperation from the Smiths. Mrs. Smith's initial letter to the Commission, dated October 25, closes with the allegations that the station has "ruined the looks of our country atmosphere and devalued our property by putting up that ugly tower . . . ." KOKS suggests that the Smiths may not ultimately be satisfied until the "ugly tower" and the station itself disappear, and clearly neither [Calvary] nor the Commission can satisfy that complaint.
>
> Mrs. Smith has also had printed a broadside which invites residents of Poplar Bluff to write to her and complain concerning any alleged "electrical" interference which can be attributed to KOKS. . . . Once again, KOKS will do its best, in the spirit of cooperation, to resolve legitimate interference complaints. It cannot, however, resolve complaints without the good faith cooperation of the complainants, and it can do little if some complainant's chief avocation is drumming up more complaints.

While some of this report is about Calvary's concerns about a lack of cooperation because of broader opposition to the station, Calvary did clearly state that the Smith complaint was not resolved, that complaints continued after KOKS had provided a filter, that KOKS proposed a different filter in response, and that the Smiths denied Calvary access to their roof to install the filter. Nowhere in this report did Calvary claim that the first filter had resolved the interference problem at the Smith home. We do not find this report misleading with regard to the effectiveness of the first filter, and the Bureau does not argue that Calvary's description of its offer to install a filter on the outside antenna or its concerns about opposition from the Smiths were inaccurately reported.

36. In its January 24, 1989 report to Raines, Calvary said, "Some complaints await resolution because Mrs. Stewart cannot contact the complainants, including: . . .

Doris Smith . . . ."[19] Bureau Exh. 17 at 3. Attached to this report are Mrs. Stewart's notes reflecting five unsuccessful attempts to call Mrs. Smith in January 1989 and also stating: "Talked to Mrs. Doris Smith on 1-15-89 at 4:00 P.M. Told her we are waiting for filters to come in and we would call her for an appointment as soon as they come in."[20] *Id.* at 84. This January conversation, which occurred more than a month after Calvary's December report, does not contradict any information provided in December about Calvary's efforts until then, and Calvary's January report does not reassert any lack of cooperation on Mrs. Smith's part. The language in the January report is misleading, however, in addressing only Mrs. Stewart's unsuccessful efforts to reach Mrs. Smith, without mentioning the conversation the two women actually held on January 15. Nonetheless, we do not find an intent to deceive in this omission from the text of the report, for Calvary made no attempt to conceal the information from the Commission. Instead it attached Mrs. Stewart's notes about the telephone conversation to the report. It is unlikely that one intending to deceive the Commission by providing inaccurate information in a report would then accompany the report with the very information it had omitted from the text. *Compare Richardson Broadcast Group*, 7 FCC Rcd 1583, 1585 (1992) (applicant disqualified for false and evasive testimony).

37. *Hodgins complaint.* The Bureau also disputes the Presiding Officer's conclusion in *ID* ¶ 114 that Calvary did not misrepresent facts when reporting it did not resolve the complaint of Edward Hodgins because a convenient time for a visit could not be arranged. *See* Bureau Exh. 18 at 2. Hodgins testified in writing the station made but failed to keep three appointments. *ID* ¶ 114; Bureau Exh. 8 at 2. The Presiding Officer found it significant that this appeared to be the only instance in which Calvary failed to keep an appointment, and said in ¶ 114:

> Having regard for the fact that KOKS made countless appointments and home visits, it does not seem reasonable that with respect to Hodgins the station deliberately failed to keep appointments with him and, thereafter, knowingly misrepresented facts that a convenient time for an appointment could not be arranged.

38. The Bureau disputes that this is an isolated instance, arguing that Calvary also failed to keep an appointment with Ms. Durbin. The record shows that Durbin filled out a petition form that asked:

> Did KOKS make an appointment with you? yes no
> More than one appointment? yes no Did KOKS
> show up for the appointed time? yes no Comments:

Ms. Durbin circled "yes" for the first two questions and "no" for the last question and commented, "did come out the 2nd time." Bureau Exh. 5 at 11. Mrs. Stewart's notes attached to Mrs. Durbin's Dec. 2, 1988 complaint reflect that an appointment for early Feb. 1989 was cancelled and later rescheduled. Bureau Exh. 19 at 62. The notes do not show who cancelled the appointment, and Calvary never claimed any inability to get together with Ms. Durbin. The Durbin situation clearly differs from Mr. Hodgins' and does not contradict the Presiding Officer's view that the Hodgins situation was unique.

39. The Bureau also disputes the Presiding Officer's analysis, arguing that Hodgins is more believable than Calvary because Hodgins' February 26, 1989 complaint does not reflect advice about a filter Calvary claims in its February 10, 1989 report KOKS personnel gave Hodgins. Mr. Hodgins was not cross examined, and there is no way to draw any conclusions about his silence on this matter or his failure to dispute the Calvary report filed ten days earlier. The Bureau's speculation from Hodgins failure to mention Calvary's advice, that Calvary must have been lying about giving the advice and therefore must have lied about the Hodgins appointments, is insufficient to show that the Presiding Officer erred in his analysis, which was based on the record as a whole.

40. *Hillis' Complaints.* The Bureau alleges that the Presiding Officer erred in failing to address whether Calvary lacked candor in its reports to the Commission regarding Mr. and Mrs. Hillis. According to the Bureau, the *ID* found at para. 33 that Calvary informed the Commission its station was not interfering with the Hillis' main television and that Calvary would do no work for the Hillis' until Mr. Hillis reduced his complaints to writing, yet, it also found that Mrs. Stewart had acknowledged hearing KOKS on channel 6 and that the Hillis' had repeatedly complained orally and in writing about radio and television reception. Indeed, the Bureau argues, in view of the findings of two Commission inspection teams over a two year period that KOKS was interfering with reception at the Hillis residence, it must be concluded that Calvary was misrepresenting facts when it claimed it was not causing interference.

41. This is another instance in which Calvary might have handled the problem better than it did. Nonetheless, on balance we do not find that a preponderance of record evidence establishes willful misrepresentation in Calvary's reports about its dealings with the Hillis' problems. Mrs. Stewart certainly should have reviewed the written complaints from both Mr. and Mrs. Hillis before visiting the Hillis home in 1989, and she should have reviewed these complaints with Mr. Lampe, the new KOKS contract engineer who accompanied her for the first time on the Hillis home visit, tr. 488, but she apparently did not. *See* tr. 232, 519. The 1989 visit to the Hillis home did not go well, according to all descriptions of it. Mrs. Stewart's perception was that Mr. and Mrs. Hillis had somewhat different complaints and that Mr. Hillis, the only one at home during the visit, had different complaints than he had earlier communicated. Tr. 523-24. Mr. Lampe's recollection is that Mr. Hillis had a long list of items affected by interference from KOKS, including items for which Calvary was not responsible, which he wanted fixed right away, and Mr. Lampe wanted Mr. Hillis "to identify exactly what the problem was and what he wanted done. . . . As best as I can recall I believe that he said he would write his problems down and mail them to me, and I

[19] The preceding sentence reads: "Several others, including those of . . . , await resolution because of the unavailability of necessary filters." Bureau Exh. 17 at 3.

[20] According to Mrs. Stewart, "Radio Shack would run out of [the filters] from time to time and we would have to wait for them to get a new shipment in." Tr. 512.

left." Calvary Exh. 1 at 6. Mrs. Hillis, who was not at home during the 1989 visit, recounted in her December 18, 1989 Petition to Deny the KOKS renewal that Mr. Lampe and Mrs. Stewart "looked at everything and left, did not offer to put a filter on or anything." Bureau Exh. 3 at 7. Although there are numerous references in the record to petitions from the Hillises, the only copy of a complaint in the record is of Mrs. Hillis' Petition to Deny. *See id.* at 7-8. There is no dispute that Calvary took no action on interference described in this petition until visiting the Hillis home again in 1991 at the Bureau's direction.

42. What does seem to be in dispute is whether Mrs. Stewart and Mr. Lampe noted blanketing interference on the main Hillis television during the 1989 visit, at least with respect to channel 6. Calvary argues that the Bureau's accusation confuses Calvary's two visits to the Hillis residence. Reply Brief at 9. We find this confusion in Mrs. Stewart's testimony at tr. 530 where she gives the date of the visit when she heard audio on channel 6 as 1989 but describes circumstances she had said elsewhere were present during the 1991 visit. *See* Calvary Exh. 3 at 19. But, Mrs. Stewart did not appear to be confused in her written testimony where she clearly said in the context of her first visit to the Hillis home, "When we turned on the TV there was no channel 6." Calvary Exh. 3 at 18. Nonetheless, this visit was during the period when Calvary believed it was not responsible for interference to channel 6. Neither Mrs. Stewart nor Mr. Lampe asked Mr. Hillis to describe his television reception before KOKS began operating, tr. 519, and there is no evidence that the KOKS transmitter was turned off for comparative purposes[21] as it was later during the Commission engineers' visits.[22] Mr. Lampe, Calvary's technical advisor in this instance, was generally of the view that many factors other than blanketing interference could affect television reception under the difficult conditions present in Poplar Bluff. *See, e.g.,* Calgary Exh. 1 at 2-4; *cf id.* at 12 and tr. 279-81 (Lampe testimony that, during later visit to Hillis home, problems with channel 6 and 12 reception were not due to KOKS). When the preponderance of the record evidence is considered, we do not find deceitful intent in Calvary's statement in its February 10, 1989 report that it did not observe interference.[23]

43. *Donald Stewart.* The Bureau also argues that Mr. Stewart should have been adjudicated a liar because of conflicts between his testimony and that of Craig Meador about a single alleged incident of overpowered operation of the KOKS transmitter. The Presiding Officer found Mr. Stewart to be "an unpersuasive witness. His testimony at times was incoherent; it was at times disjointed; and he had a tendency at times to inject irrelevant matter." *ID* ¶ 117 n.23. But, the Presiding Officer reached no conclusions about the alleged incident from the weak testimony of Meador. The Presiding Officer's demeanor finding about Mr. Stewart was of his incoherence, which he attributed to possible health problems, not of any deceitful demeanor or intent. The Bureau has offered no persuasive reason for rejecting the Presiding Officer's first hand view of the witness to reach a more nefarious conclusion about why he found Mr. Stewart unpersuasive, particularly given the vagueness of Meador's testimony and his reluctance to stand behind the details of his written testimony when cross examined. *Compare* Bureau Exh. 11 at 2 *with* tr. 1112, 1114 regarding Meador's recollection of what he saw and when he saw it. We will draw no broader conclusion on this record than the Presiding Officer did after observing Mr. Stewart's testimony.

44. *Radio.* Finally, the Bureau takes exception to the Presiding Officer's conclusion in *ID* ¶ 115 that Calvary did not submit incomplete and misleading information when claiming it had resolved complaints when it did not address complaints of KOKS interference to radio. Problems with radio reception were seldom raised by complainants during the home visits, even though they were indicated on the complaint forms. Tr. 574-77. Mrs. Stewart did not specifically ask about radios during her visits, *id.*, and Mr. Lampe could not recall of any mention of radios during his 105 home visits in 1991 to cure blanketing interference. Tr. 321. Thus, radio problems were generally not addressed in Calvary's reports for the same reasons that Calvary neglected to address other problems raised in the written complaints. Although the Bureau argues that Calvary's failure to treat radio makes misrepresentations of statements about resolved complaints, the Presiding Officer saw the problem as part of Calvary's violation of the blanketing interference rule rather than as the submission of incomplete information. *ID* ¶ 115. "KOKS reported the complainants visited and what was done in an effort to address the blanketing interference." *Id.* We see no evidence from the record that the Presiding Officer misconstrued the facts in his analysis and, thus, no basis for reversing his conclusion on this point.

CONCLUSIONS

45. *Renewal application.* Having found substantial evidence to support the Presiding Officer's view that Calvary did not make misrepresentations or lack candor in its reports to the Commission, we want to emphasize that this Board does not condone the inadequacy of Calvary's efforts to cure blanketing interference or to report more accurately to the Commission. The Commission's rules require Calvary to cure the blanketing interference caused

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[21] When testifying about his 1991 visit to the Hillis home, Mr. Lampe said he never thought of turning off the KOKS transmitter or asking about reception before KOKS began operating. Tr. 279, 281. Mrs. Stewart testisfied that she never had the transmitter power adjusted or asked about signal quality before KOKS during any of the 1991 home visits. Tr. 507.

[22] According to the Commission's engineers, reception of channel 6 was affected by the KOKS signal, as was channel 8 and possibly channel 15. *See* Calvary Exh. 5 at 1-2 (June 4, 1989 report of Poole investigation); Calvary Exh. 6 at description of Hillis home visit, Dec. 12, 1989 (Dec. 29, 1989 Moffitt & Raines report). These observations were based on comparisons of the signals with and without KOKS transmissions. *See* Calvary Exh. 5 at 1-2; Calvary Exh. 6 at 1. Both of these studies came later than the visit Calvary reported in its February 10, 1989 report, Bureau Exh. 18 at 3-4. In any event, Calvary had no contemporaneous information about Mr. Poole's evaluation of reception in the homes he visited. Tr. 476.

[23] We, likewise, do not find deceit about Calvary's intentions with respect to the Hillis problem in its reporting of the fact of civil litigation against it and the ownership of some of the named interference complainants by the Hillises in its Sept. 22, 1989 report. *See* Bureau Exh. 21 at 2, 26, 175-77.

by KOKS, even under the difficult conditions in Poplar Bluff, and as a licensee, Calvary is bound to comply unless granted a waiver. The inadequacy of its efforts has caused considerable problems for the television viewers within the KOKS blanketing contour, the Commission to whom so many have complained, and Calvary whose attention has been diverted from its primary purpose of serving the public interest. Calvary must do better if it is to retain its license for the long term. Calvary has now offered a specific -- and funded -- plan for a cure to be overseen by its communications counsel and implemented by an experienced technician who has not previously been involved in dealing with the complaints. We accept Calvary's plan, which the Bureau advises is technically adequate, and we accept Calvary's time frame -- 120 days "pushing it" -- and will affirm the one-year renewal awarded by the Presiding Officer subject to the compliance and reporting requirements detailed in *ID* ¶ 117 (footnotes omitted):

> [T]he licensee will be required to comply with the requirements of Section 73.318 of the rules. . . . KOKS is responsible for curing the blanketing interference to Channel 6 notwithstanding that the station does not place a Grade B signal over Poplar Bluff. In addition, KOKS must comply with the requirements of the *Order* released October 30, 1990, which is Mass Media Bureau Ex. 25. This includes satisfying all individuals KOKS inaccurately reported as having had their blanketing problems resolved. The additional efforts to be undertaken by the licensee . . . shall include taking all reasonable and necessary steps, including the installation of antennas, coax cabling, rotors, boosters, and high quality filters, or any combination thereof, by a qualified repairman, at no cost to the home owner. This work shall be accomplished by the licensee within 120 days to radios and television sets in each household that desires such work. A complete report shall be submitted to the Mass Media Bureau within 20 days after the repairs have been completed setting forth in detail the nature of the work done, the equipment installed, and the results of the effort. This report shall be verified by the licensee and the repairman who performed the work. The home owner shall be requested to sign the report and acknowledge, in writing, whether they are satisfied and if not, why not.

46. *Forfeiture.* One matter remains. The Presiding Officer determined that Calvary should forfeit $10,000 for its violation of the blanketing interference rule. He determined the amount of the forfeiture by referring to *Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), which has since been vacated by the court in *United States Telephone Ass'n v. FCC*, No. 92-1321 (D.C. Cir., July 12, 1994). We agree with the Presiding Officer that a forfeiture is warranted by Calvary's repeated violations of 47 CFR 73.318. We have reassessed the amount pursuant to the guidelines in the Communications Act, 47 USC 503(b)(2)(D), which directs consideration of "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require," and the Commission's implementing rule, 47 CFR 1.80(b)(4). We are concerned here that Calvary be deterred from future violations, which it avows it is, and that, in imposing a forfeiture, we not undermine Calvary's financial ability to comply, which the record has repeatedly shown to have been at least a part -- but not all -- of the problem, although specific information about the finances of this non-profit licensee has not been introduced into evidence. We have considered the record as a whole, including the "difficulties (and, perhaps, mitigating circumstances)" that confronted Calvary as set forth in *MO&O I*, 9 FCC Rcd at 576 ¶ ¶ 5-7, and reviewed further here: the organized objections from neighbors on aesthetic as well as interference grounds; the erroneous advice given Calvary about its obligation to cure the interference to channel 6, which caused the majority of the complaints and in which the Commission was complicitous; and, as found by the Commission's investigating engineers, the poor reception conditions with which Calvary was dealing. We conclude that a forfeiture should be assessed in the amount of $1,000. Our primary concern here is that the people of Poplar Bluff within the KOKS blanketing contour will no longer be deprived of the quality of off-the-air broadcast service they received prior to the initiation of KOKS' service and that blanketing interference caused by KOKS be quickly cured.

47. ACCORDINGLY, IT IS ORDERED That the application of Calvary Educational Broadcasting Network, Inc. (File No. BRED-891103UA) for renewal of the license for Station KOKS(FM), Poplar Bluff, Missouri, IS GRANTED for a term of one year from the date of release of this Decision.

48. IT IS FURTHER ORDERED That the licensee of Station KOKS(FM) SHALL COMPLY with the provisions of Section 73.318 of the Commission's Rules as described herein within 120 days from the release of this Decision.

49. IT IS FURTHER ORDERED That the licensee of Station KOKS(FM) SHALL SUBMIT the report required in paragraph 45 of this Decision within 20 days after completion of the licensee's efforts to come into compliance with Section 73.318 of the Commission's Rules.

50. IT IS FURTHER ORDERED That the licensee of Station KOKS(FM) SHALL REMIT a forfeiture in the amount of $1,000. Such payment SHALL BE SENT to the following address:

FEDERAL COMMUNICATIONS COMMISSION
POST OFFICE BOX 73482
CHICAGO, ILLINOIS 60673-7482

This payment should identify the payor and reference the control number of the Notice of Apparent Liability (NAL) and the Notice of Forfeiture (NOF). The NAL control number is FCC 92-238, and the control number of the NOF is FCC 93D-15. These references SHALL BE PLACED directly on the check. A separate piece of paper is not required.

FEDERAL COMMUNICATIONS COMMISSION

Marjorie Reed Greene
Member, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORP. File No. I-T-C-94-427

Application for authority to acquire and operate facilities for service between the United States and the Marshall Islands and Micronesia.

ORDER AND AUTHORIZATION

Adopted: October 20, 1994; Released: November 2, 1994

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the United States on the one hand, and the Marshall Islands and Micronesia, on the other hand, by MCI Telecommunications Corporation (MCI).

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-427 IS GRANTED and MCI is authorized to:

a. lease from Comsat and operate 23 voice-grade satellite circuits between MCI's Pulantat, Guam earth station and an appropriate INTELSAT satellite over the Pacific Ocean, connecting with similar circuits between the satellite and earth stations in the Marshall Islands and Micronesia, furnished by MCI's correspondents;

b. own and operate 23 voice-grade circuits in the Pulantat earth station to be used in conjunction with the satellite space segment capacity;

c. own and operate 23 voice-grade connecting circuits between the North Pacific Cable System terminal at Portland, Oregon and MCI's Dominguez Hills, California operating center;

d. own a one-half interest in and operate 23 voice-grade circuits in the North Pacific Cable System and the TPC-3 Cable System;

e. own and operate necessary connecting facilities on Guam;

f. lease a one-half interest in and operate necessary connecting facilities in Japan; and

g. use the facilities in a, b, c, d, e, and f, above to provide MCI's regularly authorized services between the United States, on the one hand, and the Marshall Islands (10 voice-grade circuits), and Micronesia (13 voice-grade circuits), on the other hand.

3. IT IS FURTHER ORDERED that our authorization of MCI to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and the Marshall Islands or Micronesia -- that is, private lines which originate in the United States and terminate in the Marshall Islands or Micronesia or which originate in the Marshall Islands or Micronesia and terminate in the United States. In addition, MCI may not -- and MCI's tariff must state that its customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or the Marshall Islands or Micronesia end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that the Marshall Islands or Micronesia affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559 (1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1992), *petition for reconsideration pending.*

4. IT IS FURTHER ORDERED that neither MCI nor any persons or companies directly or indirectly controlling or controlled by MCI, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which MCI or any persons or companies controlling or controlled by MCI are parties.

5. IT IS FURTHER ORDERED that the applicant shall file copies of any operating agreement it enters into with its foreign correspondent with the Commission within 30 days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.15(b) of the Commission's Rules, 47 C.F.R. §63.15(b), for the common carrier facilities authorized herein.

9. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

10. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. I-T-C-94-439

Application for authority to acquire and operate capacity in the ITUR Cable System.

ORDER AND AUTHORIZATION

Adopted: October 20, 1994; Released: November 2, 1994

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-439 IS GRANTED, and American Telephone and Telegraph Company (AT&T) is authorized to:

a. acquire on an Indefeasible Right of User (IRU) basis and operate 32 half-MIUs2[1] in the Italy-Turkey segment of the ITUR[2] Cable System;

b. acquire on an IRU basis and operate six half-MIUs in the Turkey-Ukraine segment of the ITUR Cable System;

c. acquire on an IRU basis and operate 21 half-MIUs in the Turkey-Russia segment of the ITUR Cable System;

d. lease a one-half interest in and operate necessary overseas connecting facilities; and

e. use these facilities to provide AT&T's regularly authorized services between the United States and Turkey (five MIUs), Ukraine (six MIUs) and Russia (21 MIUs), respectively.

3. IT IS FURTHER ORDERED that the authority herein is granted subject to the terms and conditions set forth in the C&MA for the ITUR Cable System, as well as any Commission Order granting authority to acquire and operate facilities in the ITUR Cable System.

4. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

[1] A MIU is a unit of ownership designated as the Minimum Investment Unit in the ITUR Cable System. It is a 2.048 Mbps digital bit stream and consists of two half-interests which are assigned to two correspondents for joint use or to one Party. (See ITUR C&MA).

[2] The ITUR Cable System extends between Palermo, Italy and Istanbul, Turkey, and then one segment extends to Odessa, Ukraine and another segment extends to Novorossijsk, Russia.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-429

In re Applications of

DAVID J. BOTT AND CARESE C. BOTT, JOINT TENANTS	File No. BPH-870908MN
OMNI BROADCASTING CORPORATION	File No. BPH-870908MV
GERMANTOWN BROADCASTING CORPORATION	File No. BPH-870908MY

For Construction Permit for a
New FM Station on Channel 298A
at Germantown, Tennessee

MEMORANDUM OPINION AND ORDER

Adopted: October 17, 1994; Released: November 2, 1994

By the Commission:

1. This memorandum opinion and order denies a Motion to Cancel Construction Permit, filed March 31, 1994, by David J. Bott and Carese C. Bott, Joint Tenants (Bott).[1]

I. BACKGROUND

2. Bott, GBC, and Omni are the remaining applicants in this comparative proceeding for a new FM radio station in Germantown, Tennessee.[2] The Commission, affirming a decision of the Review Board, granted Omni's application and denied those of GBC and Bott. *Eugene Walton*, 7 FCC Rcd 3237 (1992). Omni, Bott, and GBC each received 100 percent credit for integration of ownership into management. 7 FCC Rcd at 3238 ¶ ¶ 10-12. Turning to the factors which enhance integration, the Commission found that Omni's advantage for long-term local residence and broadcast experience outweighed the other applicants' lesser enhancement credits. *Id.* Bott and GBC appealed the Commission's action to the United States Court of Appeals for the District of Columbia Circuit on June 26, 1992, and June 29, 1992, respectively.

3. On January 11, 1993, the Commission issued Omni a construction permit for its new facilities. The permit required Omni to construct its station by July 11, 1994. Omni constructed its authorized facility and, on June 18, 1994, commenced program tests.

4. Meanwhile, on December 17, 1993, during the pendency of the parties' appeals, the court, in *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993), found the Commission's integration criterion arbitrary and capricious and therefore unlawful. Subsequently, on February 17, 1994, the court, in response to a motion by Bott, reversed and remanded this case for further consideration in light of *Bechtel. Bott v. FCC*, No. 92-1274 (Feb. 17, 1994) (order).

II. MOTION

5. Bott and GBC contend that the Commission should cancel or suspend Omni's construction permit. They argue that the court has invalidated the underlying basis of the Commission's grant to Omni and that Omni should not be permitted to derive any comparative benefit from constructing and operating its facility. In this regard they argue that, when this case is reexamined in light of *Bechtel*, the Commission may be biased by Omni's investment in its facilities and be reluctant to negate that investment by awarding the facility to a competing applicant based on a slight comparative advantage.

6. Omni asserts that the Commission has no basis to cancel its construction permit and that it has the right to construct and operate its facility pending further review of this case. According to Omni, reversal of a Commission comparative award has not, in the past, resulted in a stay of the award. Omni maintains that Bott and GBC have not demonstrated that a stay of the grant to a qualified applicant, which would deprive Germantown of a local service, would be warranted. Moreover, Omni contends that the court, in remanding this case, did not disagree with its outcome, which was based on qualitative factors not addressed by *Bechtel*.

III. DISCUSSION

7. We will not terminate Omni's operation of its facilities pending further comparative proceedings. We find that continued operation by Omni is consistent with law and would serve the public interest. Contrary to the claims of Bott and GBC, the court's remand of a comparative proceeding does not imply that existing service must be terminated. Rather, the Commission has the discretion to maintain existing service pending further proceedings. *See, e.g., WORZ, Inc. v. FCC*, 268 F.2d 889, 890 (D.C. Cir. 1959); *WEAT-TV, Inc.*, 45 FCC 996, 998-99 ¶ 7 (1963). *See also Highlands Broadcasting Co., Inc.*, FCC 94-245 (Oct. 6, 1994).

8. Under 47 U.S.C. § 154(i), the Commission has broad discretion to deal with unforeseen circumstances clearly within its general jurisdiction. We find that maintaining

[1] Also before the Commission are: (1) Comments in Support of Motion to Cancel Construction Permit, filed April 13, 1994, by Germantown Broadcasting Corporation (GBC), and (2) Opposition to Motion to Cancel Construction Permit, filed April 11, 1994, by Omni Broadcasting Company (Omni), and Supplement to Opposition to Motion to Cancel Construction Permit, filed June 21, 1994, by Omni.

[2] Eugene Walton, Henderson Broadcasting of Memphis, Inc., and Pederson Communications Limited Partnership did not appeal the denials of their applications, which are now final. Their names have therefore been deleted from the caption.

Omni's existing service, which was validly established in reliance on a Commission grant, falls within that discretion. *KDAB, Inc.*, 91 FCC 2d 277, 284-85 ¶ ¶ 14-15 (1982). Such temporary operation, although prior to the completion of further comparative proceedings, does not violate the hearing rights of Bott or GBC, provided that it does not prejudice them in the ultimate comparison. *See Peoples Broadcasting Co. v. FCC*, 209 F.2d 286, 288 (D.C. Cir. 1953). Thus, the court's reversal of our grant to Omni does not deprive us of the discretion to maintain its existing service in the public interest. *Cf. Coalition for the Preservation of Hispanic Broadcasting v. FCC*, 893 F.2d 1349, 1368 (D.C. Cir. 1990) (requiring the Commission to cancel an assignment of license pending further proceedings was not a necessary or appropriate aspect of a remand to determine the consistency of the assignment with Commission policy). At most, the court's action requires us to balance the public interest in continuing Omni's existing service with the potential harm to the fair consideration of the competing applicants. *La Star Cellular Telephone Co. v. FCC*, 899 F.2d 1233, 1235 (D.C. Cir. 1990).

9. Here, we find that the public interest does not favor withdrawing Omni's existing local service from its listeners or having Omni's facilities lie fallow. We find it unlikely that the temporary maintenance of Omni's service will cause prejudice to Bott and GBC, since we anticipate evaluating Omni, Bott, and GBC under comparative criteria that give Omni no credit for its temporary service. When Omni chose to construct its station, it assumed the risk that the comparative decision in its favor may not survive at the end of this proceeding. Nothing in today's decision can, or is intended to, change the fact that Omni bears this risk.

IV. ORDERS

10. ACCORDINGLY, IT IS ORDERED, That the Motion to Cancel Construction Permit, filed March 31, 1994, by David J. Bott and Carese C. Bott, Joint Tenants, IS DENIED.

11. IT IS FURTHER ORDERED, That continued operation of Omni's station IS AUTHORIZED pending further order of the Commission.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 92-167

In the Matter of

Amendment of the Amateur Radio Service Rules to Provide a Special Temporary Licensing Procedure for Visiting Foreign Amateur Operators.	RM-7680

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: October 24, 1994; Released: November 2, 1994

By the Commission:

I. INTRODUCTION

1. In the *Notice of Proposed Rule Making* (*Notice*)[1] in this proceeding, we proposed to amend the amateur service rules to provide a temporary licensing procedure for foreign amateur operators, such as tourists and convention attendees, so that they could operate their amateur stations during brief visits to our country. For the reasons given herein, this *Order* terminates the proceeding.

II. BACKGROUND

2. There are two ways that a foreign amateur operator can be authorized to operate an amateur station in the United States. Non-citizens who pass the necessary examinations can receive a ten-year term amateur service license. Citizens of countries whose governments have signed reciprocal operating agreements with the United States may, on the basis of the amateur service licenses issued by their own countries, be issued one-year permits to operate their amateur stations while they are in the United States.

3. The *Notice* in this proceeding proposed a temporary licensing procedure that would be administered under the existing volunteer-examiner coordinator (VEC) system.[2] The volunteer examiners (VEs) would accept the amateur service licenses of visiting foreign amateur operators as proof of technical and operational competence. Under the proposal, the VEs would administer a short examination on the unique rules governing the amateur service in the United States. Upon certification by the VEs, the foreign amateur operators would have conditional authority from the Commission to operate their stations for a single, consecutive sixty-day period.

III. DISCUSSION

4. The proposal in this proceeding addressed a need that visiting foreign amateur operators have for a convenient procedure by which they obtain authority to operate their amateur stations while they are here in the United States on brief visits. The comments did not dispute the need for an expeditious procedure. They did, however, raise practical and other problems in connection with such authorization. Some commenters are concerned, for example, that language barriers may pose a problem for VEs in verifying the foreign license.[3] The ARRL also sees the authorization procedure as burdensome for VEs and questions whether the VEC system should be used for this purpose.[4] Other commenters are concerned that authorizing operation by visitors from countries that do not currently have reciprocal agreements[5] with the United States might reduce the incentive for those countries to enter into such agreements.[6]

5. The ARRL believes that the best way to satisfy the need for a convenient licensing procedure is to establish an international system for reciprocal licensing and suggests the International Drivers License as a model.[7] Stephen R. Hutchins recommends that the Commission allow amateur operators from countries with whom the

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[1] 7 FCC Rcd 4988 (1992)

[2] Currently, all amateur operator license examinations are administered in the private sector under the VEC system. The VECs coordinate the efforts of volunteer examiners (VEs) in preparing, administering, and grading examinations. There are 18 VECs and between 20,000 and 30,000 accredited VEs in the United States and elsewhere. They prepare and administer over 100,000 amateur operator examinations annually to 65,000-75,000 persons.

[3] Comments of The American Radio Relay League, Inc. (ARRL) at 8. The ARRL has requested that its late-filed comments be accepted because ARRL officers were involved in meetings relating to this proceeding late in the day that these comments were due. The results of those meetings affected the position adopted by the ARRL in response to the *Notice*. Because of those late meetings, the comments could not be timely filed. We believe that the ARRL has shown good cause for the acceptance of the late comments, and in the interest of a complete record, its request is granted. *See also* the comments of Carl Zelich at 1, Earl S. Mead at 1, and Anchorage Amateur Radio Club, Inc. VEC at 1.

[4] Comments of ARRL at 7-9. The ARRL also states at page 7 that, under the proposal, the VEs would be issuing "United States license documents, with no participation on the part of the Commission in determining operator qualifications at all." That would not be the case. The authority to operate would come from the rule which authorizes the amateur station of the visiting foreign amateur operator to transmit. *See* proposed rule Section 97.5 which was set forth in the *Notice* in this proceeding. The role of the VE would be merely to issue a Certificate of Successful Completion of Examination (CSCE) to the foreign visitor. The CSCE would be visible proof of the foreign visitor's conditional license authority to operate the station in the United States. *See* proposed rule Section 97.529(c).

[5] Section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310(c), authorizes the Commission to issue permits to aliens, licensed by their governments as amateur operators, to operate their licensed amateur stations in the United States provided that there is a bilateral or multilateral reciprocal agreement in effect between the United States and the alien's government.

[6] Comments of W. H. Guin at 1, and Carl Zelich at 2.

[7] Comments of ARRL at 11, 12, and 14.

United States has reciprocal agreements, and amateur operators whose licenses convey conditions authorized by the Conference of Europeenne des Administrations de la Post et Telecommunication (CEPT), to operate their amateur stations in the United States.[8] Mutual recognition of the licenses of CEPT member countries and non-member countries may be considered at some future date. Such recognition requires coordination with the Department of State as well as international negotiations. Rather than retaining Mr. Hutchins' rule making petition in a pending status while we pursue such international negotations, we believe that it is advisable to dismiss it without prejudice.

IV. CONCLUSION

6. In light of concerns expressed by the commenters, we have decided not to amend the amateur service rules as proposed. We recognize, however, the need for a convenient licensing procedure for visiting foreign amateur operators and have noted the suggestions in the comments for alternative means of licensing visiting foreign amateur operators. We will, therefore, continue to explore other ways by which the need can be met. In particular, we will work to ensure the reciprocal treatment of United States amateur operators – whether through bilateral or multilateral arrangements.

V. ORDERING CLAUSES

7. Accordingly, pursuant to the authority contained in 47 U.S.C. § 154(i), IT IS ORDERED that this proceeding IS TERMINATED.

8. In addition, for the reasons discussed above, rule making petition RM-7680, filed by Stephen R. Hutchins, IS DISMISSED without prejudice.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[8] Comments of Stephen Hutchins at 4. Mr. Hutchins urges the Commission to adopt a proposal that he filed March 13, 1991, (RM-7680), to allow CEPT licensees to operate in the United States.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Teleport Transmission Holdings, Inc. — File Nos. I-T-C-94-269-TC, 1236-DSE-TC-94(2)

Applications for Authority Pursuant to Section 214 and 310(d) of the Communications Act, as Amended, to Acquire Channels of Communication by Transfer of Control of Teleport Transmission Company

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: October 26, 1994; Released: November 3, 1994

By the Chief, Telecommunications Division:

1. The above-captioned applications, filed by Teleport Transmission Holdings. Inc. (TTH), requests authority, pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. §§ 214 and 310(d), to acquire by transfer of control of Teleport Transmission Company (TTC) channels of communication between existing and prospective satellite earth stations in the United States and INTELSAT Atlantic and Pacific Ocean Regions. TTH proposes that these channels of communication will be used to provide trans-Atlantic and trans-Pacific digital INTELSAT Business Service and video service ("IBS") and analog international television transmission and reception services ("ITS") within the coverage pattern of the designated INTELSAT satellites, including services between the United States and Asia, Australia, Europe and Latin America.[1] We placed the applications on public notice and received no comments. We grant these applications for the reasons stated below.

2. TTC, a wholly-owned subsidiary of SatTime, Inc. (SatTime), holds radio licenses for satellite earth stations under Title III of the Act.[2] It also holds a certificate, issued pursuant to Section 214 of the Act, to establish and operate channels of communication for the provision of IBS and ITS. TTH is a newly-formed U.S. corporation organized under the laws of the State of Colorado. All of its officers and 75 percent directors are U.S. citizens. The capital stock of TTH is owned 60 percent by Mr. William W. Becker, a Canadian citizen, and 40 percent by Mr. Michael L. Glaser, a U.S. citizen. Mr. Becker is the only non-U.S. citizen participant in the ownership and management of TTH. In addition to owning 60 percent of the stock of TTH, Mr. Becker is the Chairman of the Board of Directors of TTH.[3]

3. TTH seeks to acquire control of the subject channels of communication by acquiring all of the issued and outstanding capital stock of TTC from SatTime. Upon Commission approval of the applications and TTH's consummation of the purchase of TTC, TTH will own 100 percent of TTC's capital stock. All of TTC's new officers and directors will be U.S. citizens. TTH states that this proposed transfer of control serves the public interest because under the ownership of TTH, TTC intends to provide international telecommunications services for which there is a present and potential need in a sizeable sector of the business community in the Denver, Colorado metropolitan area. TTH states that to date, TTC has been concentrating on serving primarily the domestic communications needs of users in the Denver area, and has not negotiated the correspondent agreements necessary to terminate IBS or ITS traffic in other countries. But under the ownership of TTH, TTC intends to provide these services.

DISCUSSION

4. These applications replace a previous application filed by TTH on November 12, 1991. In that application, the ownership of TTH was different. The sole shareholder of TTH was Teleport Denver, Inc. ("TDI"), a U.S. corporation organized under the laws of Delaware. All of its officers and 75 percent of its directors were U.S. citizens. TDI, a holding company, was controlled and 95 percent owned by Intertel Communications, Inc. (INTERTEL) and 5 percent owned by Worldwide Condominium Development Ltd. (World Condo). INTERTEL was owned and controlled by Mr. William W. Becker,[4] the President and a Director of INTERTEL, and family members (hereinafter collectively referred to as the Becker Group) through a 54 percent ownership interest.[5]

5. In that case, the Commission found that the proposed transfer of control raised the issue of indirect alien ownership of a Title III licensee because it would effectively result in 59 percent indirect alien ownership of TTC.[6] Therefore, the Commission addressed the issue of whether the proposed transfer triggered the application of Section 310(b)(4), which limits indirect alien ownership

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[1] The channels of communication that are the subject of this application were authorized to TTC. *See* 2 FCC Rcd 3212 (1987).

[2] TTC holds radio licenses for five satellite earth stations. Two of the earth station licenses cover common carrier domestic fixed satellite service stations; the other three are for non-common carrier international fixed satellite stations (KA-341, KA-342 and KA-343). The Commission approved the transfer of the latter three non-common carrier satellite earth station licenses to Commden Ltd. on April 4, 1994.

[3] Mr. Becker also serves as the Chairman and Chief Executive Officer of IntelCom Group Inc. ("IntelCom"), a Canadian corporation and parent of IntelCom Group (U.S.A.), Inc. ("ICG"). Through various subsidiaries, ICG provides telecommunications services, including alternate access, network and satellite services.

[4] This is the same Mr. William W. Becker who now owns 60 percent of the present TTH.

[5] INTERTEL is currently a Canadian corporation, publicly-traded in both Canada and the United States, and World Condo is a privately-held Cayman Islands corporation, controlled by Mr. William W. Becker.

[6] *See Teleport Transmission Holdings, Inc.*, 8 FCC Rcd 3063, 3065 (1993).

in common carrier licensees.[7] The Commission concluded that this degree of indirect alien ownership was consistent with previous exercises of Commission discretion pursuant to Section 310(b)(4).[8] In addition to being a U.S. corporation, 75 percent of INTERTEL's directors and officers would be U.S. citizens at the time of the transfer of control. The Commission noted that all of the officers of the two intervening subsidiaries between INTERTEL and TTC would be U.S. citizens. The Commission thus found that the 25 percent alien officer participation in INTERTEL was sufficiently remote so as to not adversely affect the public interest. Finally, the Commission noted that the two licenses involved are common carrier licenses (File Nos. 001291-DSE-P/L-87 and 001292-DSE-P/L-87) and that TTC, the licensee, will exercise therefore no control over the content of the transmissions. Based on the specific facts of that application, including the pledges contained in the subsequent amendments, the Commission found no public interest reason to deny TTH's request to acquire TTC. The Commission therefore consented to the transfer of control, subject to a number of conditions.[9]

6. With respect to the applications currently before the Commission, the facts are very similar and we see no reason not to make a similar finding. In this case, the transferee, TTH, a U.S. corporation, will be 60 percent owned by Mr. Becker, a Canadian citizen, and 40 percent owned by Mr. Glaser, an American citizen. As we found in *Teleport Transmission Holdings, Inc.*, this degree of indirect alien ownership is consistent with previous exercises of Commission discretion pursuant to Section 310(b)(4).[10] In addition, TTH is incorporated in the United States, and all of its officers and 75 percent of its directors are U.S. citizens, consistent with the Commission's previous rulings. We thus find that the 25 percent alien director participation in TTH is sufficiently remote so as to not adversely affect the public interest. Finally, we note that the licenses involved are common carrier licenses and that TTC, the licensee, will exercise no control over the content of the transmissions. Based on the specific facts of this application, we find no public interest reason to deny TTH's request to acquire TTC.

7. Accordingly, IT IS ORDERED that we consent to the transfer of control of the licensee, TTC, to TTH subject to the conditions that Mr. Becker not have greater than a 60 percent ownership interest in TTH's capital stock and that TTH (i) have 75 percent U.S. officers and directors upon consummation of the transaction and (ii) survey periodically the ownership of its outstanding capital stock to ensure at least 40 percent ownership by U.S. citizens.

8. IT IS FURTHER ORDERED that TTH shall file with the Commission proof of compliance with the conditions set forth above within 30 days of consummation of the transaction.

9. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of this Order's public notice date (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

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[7] Section 310(b)(4) states, in pertinent part:

> (b) No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted or held by --
>
> * * *
>
> (4) any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

[8] *See GRC Cablevision, Inc.*, 47 F.C.C.2d 467, 30 R.R.2d 827 (1974) and *GCI Liquidating Trust*, 7 FCC Rcd 7641 (1992).

[9] In particular, the Commission ruled that the Becker Group must not have greater than a 60 percent ownership interest in INTERTEL's capital stock and that INTERTEL (i) reincorporate in the United States prior to consummation of the transaction; (ii) have 75 percent U.S. officers and directors upon consummation of the transaction; and (iii) survey periodically the ownership of its outstanding capital stock to ensure at least 40 percent ownership by U.S. citizens. *See Teleport Transmission Holdings, Inc.*, 8 FCC Rcd at 3065.

[10] *See* n.8, *supra*.

Before the
Federal Communications Commission
Washington, D.C. 20554

GN Docket No. 94-96

In the Matter of

Inquiry into alleged abuses of
the Commission's auction
processes by applicants for
licenses in the Interactive
Video and Data Services

ORDER

Adopted: October 17, 1994; Released: October 18, 1994

By the Commission:

1. By an Order released on August 30, 1994 (FCC 94-222), the Commission initiated an inquiry into abuses that may have occurred with regard to auctions of licenses in the Interactive Video and Data Services (IVDS). The non-public inquiry is being conducted pursuant to 47 U.S.C. § 403. Now before us are (1) a Petition for Partial Reconsideration; (2) a Second Emergency Motion for Stay; and (3) a Supplement to Petition for Partial Reconsideration. All three pleadings were filed by Commercial Realty St. Pete, Inc. (CRSP). Also before us is a letter from EON Corporation (EON) opposing CRSP's reconsideration request.

2. In its Petition for Partial Reconsideration and Supplement, CRSP asks the Commission to expand the scope of the inquiry to include an investigation into the availability of IVDS technology and equipment. In its Supplement, CRSP requests that this investigation be open to the public and that counsel for CRSP be permitted to subpoena witnesses and documents, object to questions, and cross examine witnesses.

3. CRSP has refused to make down payments on the 20 licenses in the IVDS for which it bid and states that its principals and attorneys have received subpoenas in this investigation. CRSP wants the Commission to expand the scope of the investigation so that it can demonstrate that there was good cause for its failure to make the down payments. According to CRSP, the technology for establishing an IVDS system does not exist and IVDS equipment is not available. CRSP contends that if the scope of the inquiry is expanded, it will prove these allegations.

4. This proceeding is a fact finding inquiry. It is not an adjudicatory proceeding and will not determine CRSP's rights or the rights of any other individual or entity. Accordingly, there are no non-Commission parties to this proceeding and CRSP, a non-party, has no standing to file any of its requests. CRSP's requests will, therefore, be dismissed. *See Inquiry into Alleged Abuses of the Commission's Processes by Applicants for Broadcast Facilities,* 4 FCC Rcd 6498 (1989).

5. Moreover, there is no merit to CRSP's request that the scope of the inquiry be expanded. The Section 403 inquiry we have initiated is already sufficiently broad in scope to encompass all relevant facts and circumstances surrounding the failure of bidders to make the required payments. We expect the staff and the presiding Administrative Law Judge to develop a complete record without the necessity of further expanding the nature of the inquiry.

6. CRSP's further requests that the inquiry be opened to the public and that CRSP be permitted to adduce evidence and examine witnesses again reflect a fundamental misconception of the nature of this proceeding. CRSP is not a party, its rights are not being adjudicated, and it has no standing to participate in any capacity. *Southern Bell Tel. & Tel. Co.*, 70 FCC 2d 705, 707 (1979); *In the Matter of Inquiry Into Radio Station KISN, et al.*, 22 FCC 2d 471 (1970). If CRSP's principals are called as witnesses, its counsel may be present and may participate to the extent permitted by Section 1.27 of the Commission's Rules. *See KISN*, 22 FCC 2d at 472. We have directed that the investigation not be conducted in public and we continue to believe that a non-public inquiry is appropriate. *See Southern Bell*, 70 FCC 2d at 708.

7. Finally, CRSP requests that we stay this investigation, including the dates by which it must respond to subpoenas, until we have ruled on its reconsideration requests. We are now ruling on the reconsideration requests. Therefore, were we not dismissing CRSP's stay request because of CRSP's lack of standing, we would dismiss it as moot.

8. ACCORDINGLY, IT IS ORDERED, That the Petition for Partial Reconsideration, Second Emergency Motion for Stay, and Supplement to Petition for Partial Reconsideration, filed by Commercial Realty St. Pete, Inc., ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

Mo-Tel Cellular, Inc. — File Nos. 00108-CL-MP-91, 05126-CL-L-92, MSD 93-17

For Modification of License for Station KNKN 674 in the Domestic Public Cellular Radio Telecommunications Service on Frequency Block A, in Market No. 444, Kentucky 2 (Union)

MEMORANDUM OPINION AND ORDER

Adopted: October 7, 1994; Released: November 3, 1994

By the Chief, Mobile Services Division:

I. INTRODUCTION

1. In this Order, we address a complaint filed February 4, 1993, by PC Cellular of Kentucky, L.P. (PC Cellular) against Mo-Tel Cellular, Inc. (Mo-Tel) that requests that the Commission revoke Mo-Tel's authorization to provide cellular service in Market No. 444, Kentucky 2 (Union), or revoke the cell authorization it received in File Nos. 00108-CL-MP-91 and 05126-CL-L-92, or require that it reduce power at its Lamasco cell site sufficiently to eliminate that station's interference to PC Cellular. For the reasons discussed below, we grant PC Cellular's complaint in part.

II. BACKGROUND

2. PC Cellular is the licensee of the Block A cellular system in the Kentucky 1 - Fulton (KY 1) Rural Service Area (RSA), market number 443. Mo-Tel is the licensee of the Block A system serving the adjacent Kentucky 2 - Union (KY 2) RSA, market 444. On June 14, 1991, Mo-Tel filed an application to add the Lamasco cell site to its cellular system serving KY 2. The application was assigned the file number 00108-CL-MP-91 and placed on public notice. It was unopposed and subsequently granted, and the Commission was notified of completion of construction (reference file number 05126-CL-L-92). On February 4, 1993, PC Cellular filed the subject complaint that we now consider.

III. PLEADINGS; DISCUSSION

3. PC Cellular alleges that Mo-Tel's application to add its Lamasco cell site did not accurately demonstrate the interference to KY 1 that the modification would cause. Mo-Tel, says PC Cellular, misrepresented that the cell would extend very slightly into KY 1. The map that Mo-Tel provided in its application showed a 39 dBu contour with no discernible extension into KY 1, but PC Cellular attests that it has now discovered that the Lamasco cell's 39 dBu contour actually extends 17.2 square miles into KY 1. Mo-Tel's signal, claims PC Cellular, is interfering with PC Cellular's ability to serve many of its customers within its market. The extension, claims PC Cellular, is over Kentucky Lake, a major recreation area, and covers at least 8 miles of the lake's highly desirable coastline, which is also within KY 1. Furthermore, continues PC Cellular, because the extension was not shown, the need for the extension was not justified with an engineering explanation, as required by Section 22.923(c)(1) of the Commission's Rules. *See, e.g., Iowa RSA No. 4 Limited Partnership,* 6 FCC Rcd 2919 (Mobile Serv. Div. 1991).

4. Consequently, claims PC Cellular, the Commission was deprived of the opportunity to properly evaluate Mo-Tel's extension into KY 1. Had the Commission been furnished an accurate depiction of Mo-Tel's actual contour extension into KY 1, submits PC Cellular, the Commission would have found that the extension is neither *de minimis* nor necessary. In addition, PC Cellular says that had it known what Mo-Tel's plans really were, it would have opposed Mo-Tel's application. Because the information Mo-Tel provided to the Commission substantially misrepresented the size of the Lamasco cell extension, however, PC Cellular says it had no cause for concern and, thus, did not file an objection.

5. In view of the foregoing facts, says PC Cellular, it is reasonable to conclude that Mo-Tel's misrepresentations may have been intentional. Therefore, PC contends that the Commission must hold a hearing to determine if Mo-Tel's misrepresentations were intentional. If the misrepresentations were intentional, says PC Cellular, the Commission should find Mo-Tel to be unfit to be a Commission licensee and revoke Mo-Tel's authorization to provide cellular service to all of KY 2. Even if the misrepresentations were not intentional, says PC Cellular, the Commission should, nevertheless, revoke Mo-Tel's authorization for the Lamasco site and require it to reapply using the Commission's newly adopted standard. *See Amendment of Part 22 of the Commission's Rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules (Second Report and Order),* 7 FCC Rcd 2449, *aff'd,* 8 FCC Rcd 1363 (1993), further recon. pending, petition for review pending *sub nom. Committee for Effective Cellular Rules v. FCC,* No. 93-1220 (D.C. Cir., filed March 22, 1993).

6. Alternatively, if the Commission does not revoke Mo-Tel's authorization for all of KY 2 or its authorization for the Lamasco site, PC Cellular requests that Mo-Tel be required to reduce power at the Lamasco site sufficiently to eliminate all interference to PC Cellular, and to bring its contours within the KY 2 border.

7. Responding, Mo-Tel points out that PC Cellular was furnished with the information contained in Mo-Tel's application for the Lamasco site approximately one year and eight months before it filed the subject complaint. Because so much time has passed, Mo-Tel submits that it must be concluded that PC Cellular either never bothered to determine the effect that the Lamasco cell would have upon KY 1 or that it determined that it would have no

adverse effect and PC Cellular now has changed its mind. In either case, argues Mo-Tel, PC Cellular's allegations are stale and relief should be barred on that basis.

8. Staleness notwithstanding, Mo-Tel denies unequivocally that it has made any misrepresentations, intentional or unintentional, to either the Commission or PC Cellular. The calculations, depiction, and description of the Lamasco cell 39 dBu contour contained in its June 4, 1991, application, professes Mo-Tel, were then and are now correct. Mo-Tel submits that the alleged discrepancies between its tabulations and PC Cellular's are so minor as to be insignificant and are easily attributable to one or more of the following: (1) the use of different terrain data bases; (2) the use of different computer software programs; (3) differences in the reading and interpolation of the Carey propagation curves;[1] and (4) PC Cellular's use of additional radials in its recalculation.[2] Moreover, continues Mo-Tel, PC Cellular's allegations of interference cannot be relied upon. They are both inadequate and unverifiable.

9. In reply, PC Cellular says that it has re-plotted Mo-Tel's 39 dBu contour, using Mo-Tel's terrain data and without the extra radials, and its calculations reveal that the contour extends 16.06 square miles into PC Cellular's Cellular Geographic Service Area (CGSA), which is much more than was represented by Mo-Tel in its June 4, 1991, application. In addition, PC Cellular attests that it has discovered discrepancies in Mo-Tel's application that cannot be attributed to differences in computer software or interpolation methodology, as claimed by Mo-Tel. Consequently, PC Cellular submits that, at a minimum, Mo-Tel must be ordered to eliminate all interference to PC Cellular, and to bring its contours within the KY 2 border.

10. Based on the evidence here, we find that Mo-Tel must pull back its service area boundary (SAB). We have reviewed closely Mo-Tel's June 4, 1991, application and concur with PC Cellular's assertion that the Lamasco cell's 39 dBu contour is considerably larger than represented by Mo-Tel. Using the engineering data contained in the application, we have recalculated the Lamasco 39 dBu contour and find that the contour extends into PC Cellular's CGSA more than was represented by Mo-Tel. The bulk of the penetration occurs between the Lamasco 225 and 270 degree radials, encompassing a large portion of Kentucky Lake and its shoreline.

11. Several factors appear to have contributed to Mo-Tel's mistaken depiction of the Lamasco 39 dBu contour. Each of Mo-Tel's eight radials are at least 0.3 mile longer than it claims; the 225 and 270 degree radials are 0.4 mile longer. Also, the coordinates from which Mo-Tel plotted the radials are approximately 0.5 mile to the east of the Lamasco site's actual coordinates, which erroneously shifted the entire depiction of the Lamasco 39 dBu contour, making Mo-Tel's penetration into the area served by PC Cellular to appear 0.5 mile less than it actually is. Finally, instead of plotting the arcs between its radials with smooth curves, Mo-Tel appears to have hand drawn the arcs in a linear fashion, thereby shorting the distances from the Lamasco site to the apices of the arcs by at least 1.5 miles. This methodology also diminished the depiction of its penetration. The aggregate effect of these mistakes is that the Lamasco 39 dBu contour encompasses 16.06 square miles more of PC Cellular's CGSA than Mo-Tel represented in its June 4, 1991, application.

12. At the time Mo-Tel was granted authority to add the Lamasco cell site to its cellular system it was specifically advised that the grant was conditioned upon Mo-Tel's coordinating with the co-channel licensees in the areas outside the KY 2 RSA, and in the event any of these licensees should encounter interference from the Lamasco cell, Mo-Tel would have to change frequencies in the cell or pull back to its 39 dBu contour to eliminate the interference. *See* "Radio Station Authorization", File No. 05126-CL-92 (issued April 15, 1992). Therefore, while Mo-Tel's extension is not large in size, as we have pointed out, it does overlap PC Cellular's CGSA, and is interfering with PC Cellular's service. Mo-Tel will not, however, be required to pull back its signal completely from PC Cellular's CGSA. Mo-Tel's application was filed and granted prior to the effective date of the *Second Report and Order*, which replaced the required use of Carey 39 dBu contours with a mathematical formula for determining the distances to a cellular system's SAB. Furthermore, PC Cellular has demanded only that Mo-Tel remove its 39 dBu contour, rather than its entire SAB.

13. Although PC Cellular has demonstrated that Mo-Tel did not accurately depict the incursion into KY 1, PC Cellular has failed to provide tangible evidence demonstrating that Mo-Tel's misrepresentations were the product of a deliberate scheme to deceive. Our review of the record leads us to conclude that Mo-Tel's mistakes were unintentional and, therefore, do not warrant further administrative sanctions, provided Mo-Tel removes its 39 dBu extension for PC Cellular, Inc.'s CGSA. *See* 47 U.S.C. § 312.

IV. CONCLUSION

14. In view of the foregoing, we find that Mo-Tel, with its Lamasco cell site, is unintentionally causing interference within PC Cellular's CGSA, and, therefore, Mo-Tel must reduce its antenna height or transmitter power, or both, at the pertinent cell(s) sufficiently to eliminate its 39 dBu contour into PC Cellular's CGSA. We also believe that this controversy could have been easily avoided and the resources of the parties and the Commission alike could have been put to more constructive use had the parties exercised more diligence in their preparation and review of the proposal to construct the Lamasco facility.

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED THAT, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the "Formal Complaint" filed by PC Cellular, Inc. (File No. MSD 93-17) IS GRANTED IN PART AND DENIED IN PART.

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[1] Carey propagation curves are graphs that were formerly required by Section 22.903 of the Commission's Rules to be used for plotting the 39 dBu service contour of a cellular transmitter.

[2] PC Cellular's recalculation of the technical parameters of Mo-Tel's Lamasco cell, in addition to the eight radials required by Section 22.115(a)(1) of the Commission's Rules, relies on an additional four radials for its depiction of the cell's 39 dBu contour.

16. IT IS FURTHER ORDERED THAT Mo-Tel Cellular, Inc., within 30 days of the release of this Order, reduce the transmitting power or antenna height or make any other changes needed at the Lamasco cell site so as to remove its 39 dBu extension from the Cellular Geographic Service Area of PC Cellular, Inc., and notify the Commission of such changes by filing FCC Form 489 and a revised Cellular Geographic Service Area map showing the contour changes.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: November 3, 1994

MODIFIED CABLE CONVERTER-DECODERS

It has come to the attention of the Commission that the use of unauthorized cable television converter-decoders to view cable programming has been growing. We are issuing this public notice in an effort to inform the public that the use of unauthorized converter-decoders in this fashion violates Federal law.

All models of converter-decoders must be authorized by the Commission. The Commission does not knowingly grant authorizations for converter-decoders which are capable of intercepting encoded or scrambled cable programming transmissions without authority from the cable operator transmitting such programming. Any modifications made to this equipment to allow such illegal use will void any existing FCC authorization. Thus, devices which were initially authorized by the FCC but are sold with modifications allowing the user of the device to receive encoded or scrambled cable television programming without authorization from the cable operator are illegal regardless whether the FCC authorization label is still affixed to them. Converter-decoders modified in this manner may not lawfully be imported, sold, leased or used. *See* 47 USC Sec. 302(b).

The use of a converter-decoder to intercept or receive, or to assist in intercepting or receiving, cable programs without authorization from a cable system carries penalties of up to $1000 or imprisonment for up to six months. In addition, any person who employs such devices for commercial or private financial gain may be subject to a fine of $50,000 or two years imprisonment for a first offense. Greater penalties apply to subsequent offenses. *See* 47 USC Sec. 553.

Consumers should be on notice that devices that are advertised with the promise to deliver "free satellite TV" or "free cable TV" may be illegal and the use of such devices without authorization from the cable operator may subject the user to the aforementioned penalties.

For additional information on this matter, please contact John A. Reed at (202) 653-7313 or at FCC, 1300B4, Washington, DC 20554.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: October 28, 1994

COMMENTS INVITED ON FLORIDA PUBLIC SAFETY PLAN AMENDMENT

On May 10, 1990, the Commission accepted the Public Safety Plan for Florida (Region 9). On August 3, 1994, Region 9 submitted a proposed amendment to its plan that would, in part, revise the current channel allotments and extend the current application benchmark date. Because the proposed amendment is a major change to the Region 9 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before **December 7, 1994** and reply comments on or before **December 22, 1994**. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, D.C. 20554 and should clearly identify them as submissions to **Gen. Docket 90-119 Florida-Public Safety Region 9**.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-131

In the Matter of

Amendment of Section 73.202(b),	RM-7702
Table of Allotments,	RM-7840
FM Broadcast Stations.	RM-7841
(Flora and Kings, Mississippi and Newellton, Louisiana)	

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: October 26, 1994; Released: November 3, 1994

By the Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for reconsideration and stay filed on behalf of St. Pe' Broadcasting, Inc. ("St. Pe'), licensee of Station WJXN(FM), Utica, Mississippi, of a *Report and Order* denying its counterproposal.[1] *See* 7 FCC Rcd 5477 (1992). St. Pe' requested the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi, and modification of its license for Station WJXN(FM) accordingly. To accommodate Channel 265C3 at Utica, St. Pe' also requested the substitution of Channel 225A for Channel 265C3 at Hazlehurst, Mississippi, substitution of Channel 246A for Channel 266A at Vicksburg, Mississippi, allotment of Channel 266A at Epps, Louisiana, and the allotment of Channel 289A to Kings, Mississippi, in lieu of proposed Channel 246A. The *Report and Order* substituted Channel 247C3 for Channel 248A at Flora, Mississippi, in response to a counterproposal filed by Crossroads Communications ("Crossroads"). Crossroads filed an opposition to the petition for reconsideration and St. Pe' filed a reply to the opposition.

2. St. Pe' subsequently filed a petition for rule making proposing the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi, and modification of its license for Station WJXN(FM). To accommodate the upgrade, St. Pe' also requested the substitution of Channel 225A for Channel 265C3 at Hazlehurst, Mississippi, and substitution of Channel 267A for Channel 266A at Vicksburg, Mississippi.[2] *See* 8 FCC Rcd 4080 (1993). St. Pe' also filed a counterproposal requesting the substitution of Channel 265C2 for Channel 225A at Utica, which was accepted, consistent with the Commission's spacing requirements. In the *Report and Order* in MM Docket 93-158, adopted October 26, 1994, we granted St. Pe's upgrade request. Therefore, St. Pe's petition for reconsideration is now moot.

3. In view of the above, IT IS ORDERED, That the petition for reconsideration filed by St. Pe' Broadcasting, Inc. IS HEREBY DISMISSED.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

[1] Public Notice was given on November 12, 1992 (Report No. 1917). St. Pe's counterproposal was denied because of a short spacing to Station WMDC-FM, Channel 265C3, Hazlehurst, Mississippi. Although Station WMDC-FM was operating on Channel 265A, its license had been modified to specify operation on Channel 265C3 in MM Docket 89-411. *See* 5 FCC Rcd 2817 (1990).

[2] St. Pe's petition was found to be acceptable as the conflict with Station WMDC-FM has been removed. Copiah County Broadcasting Company, licensee of Station WMDC-FM, did not file a Form 301 to upgrade Station WMDC-FM to class C3 facilities and has been deemed to have abandoned its interest in the C3 allotment. The *Report and Order* in MM Docket 93-158, adopted October 26, 1994, substitutes Channel 225A for Channel 265C3 at Hazlehurst and modifies the license for Station WMDC-FM accordingly.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-158

In the Matter of

Amendment of Section 73.202(b),	RM-8239
Table of Allotments,	RM-8317
FM Broadcast Stations.	
(Hazlehurst, Utica and	
Vicksburg, Mississippi)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 26, 1994; Released: November 3, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 8 FCC Rcd 4080 (1993), issued in response to a petition filed by St. Pe' Broadcasting ("St. Pe'"). St. Pe' requested the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi, and modification of its license for Station WJXN(FM) to specify operation on the higher class channel. Crossroads Communications, Inc. ("Crossroads") filed a request for Extraordinary Relief to which St. Pe' filed a response.[1] Willis Broadcasting Corporation ("Willis") filed comments supporting the substitution at Utica.[2] St. Pe' filed a counterproposal.[3] Late-filed comments were received from Donald B. Brady ("Brady").[4] Reply comments were filed by St. Pe', Crossroads, Brady and Willis.[5]

2. The *Notice* proposed the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi, and modification of the license for Station WJXN(FM) accordingly. To accommodate the upgrade, St. Pe' also requested the substitution of Channel 267A for Channel 266A at Vicksburg, Mississippi, and modification of the license for Station WBBV-FM and substitution of Channel 225A for Channel 265C3 at Hazlehurst, Mississippi, and modification of the license for Station WMDC-FM. An *Order to Show Cause* was issued to Bishop Broadcasting, Inc. ("Bishop"), the licensee of Station WBBV-FM, Vicksburg, Mississippi, and to Copiah County Broadcasting Company, licensee of Station WMDC-FM, Hazlehurst, Mississippi, to show cause why their licenses should not be modified accordingly. Although Station WMDC-FM requested and was granted authority to operate on Channel 265C3, effective June 15, 1990, the station has never filed a Form 301 for Channel 265C3. *See Report and Order*, (MM Docket No. 89-411), 5 FCC Rcd 2817 (1990). On March 16, 1993, the Commission sent a letter to Copiah County Broadcasting Company, the licensee of Station WMDC-FM, advising it that unless an FCC Form 301 application for a construction permit for Class C3 facilities is filed within 30 days of the date of the letter, it would be made a party to the rulemaking proceeding and the allotment could be downgraded. Further, the licensee

[1] Crossroads filed the request for extraordinary relief in this proceeding because its upgrade in MM Docket No. 91-131 has been stayed with the filing of a Petition for Reconsideration by St. Pe' in that proceeding. *See* 7 FCC Rcd 5477 (1992).

Docket No. 91-131 was issued in response to a petition filed by Donald B. Brady proposing the allotment of Channel 246A to Kings, Mississippi, as that community's first local service. However, the area known as Kings has been annexed into the community of Vicksburg, Mississippi, and is no longer a separate community according to the 1990 U.S. Census. We note, that even if Kings were a separate community, Donald B. Brady's expression of interest for the allotment at Kings was received after the cut-off dates established in the proceeding and would not have been considered even if a channel could be allotted to Kings. Crossroads filed a counterproposal in the proceeding which resulted in the substitution of Channel 247C3 for Channel 248A at Flora, Mississippi, and modification of its construction permit for Station WXFJ(FM) to specify operation on Channel 247C3. St. Pe' also filed a counterproposal requesting the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi, which was found to be unacceptable. St. Pe' then filed the petition for reconsideration in Docket 91-131 and, at the same time, filed a new petition for rule making which resulted in the issuance of the *Notice* in this proceeding.

[2] An assignment of license for Station WJXN(FM), Utica, Mississippi, was granted on September 14, 1993, and consummated on October 21, 1993 (BALH-930714GE). Willis Broadcasting Corporation is the new licensee of Station WJXN(FM).

[3] Public notice of the counterproposal was given on August 31, 1993, Report No. 1962 (RM-8317). The Public Notice indicated that the counterproposal constitutes an incompatible channel swap and is thus protected from competing expressions of interest.

[4] The *Notice* incorrectly indicated that comments expressing an interest in the use of Channel 265C3 would be accepted. The upgrade at Utica and substitution of a channel at Hazlehurst constitutes an incompatible channel swap. *See Blair, Nebraska, et al*, 8 FCC Rcd 4086 (1993). Therefore, the comments filed by Donald B. Brady are not acceptable and no further consideration will be given to his comments or responsive comments. We do note, however, that Brady's comments were not filed in accordance with Section 1.420(a) and (c) of the Commission's Rules. Moreover, they were received after the cut-off date and were not accompanied by a motion to accept. Although it appears that Brady's comments were received in the Commission on the comment date by means of electronic transmission, they were received by the Office of the Secretary one day after the established comment period in this proceeding. It is the obligation of the party submitting comments to ensure that documents are delivered to the Office of the Secretary at the Commission on time. It appears that Brady attempted to advance his comments to correspond with the cut-off date in this proceeding and was obligated to adhere to the requirements set forth in the *Notice*. Finally, Brady failed to state his intention to reimburse Station WBBV-FM, Vicksburg and Station WMDC-FM, Hazlehurst, for expenses incurred in changing channels to accommodate the allotment of Channel 265C3 at Utica.

[5] Commission Rule 1.405(c) states that no additional pleadings may be filed unless specifically requested or are authorized. We do not believe the public interest would be served by the acceptance of the additional comments filed by Brady, St. Pe', Crossroads and Willis.

was notified that extensions of the 30 day period, during which the construction permit application must be filed, would not be granted. Copiah County Broadcasting Company did not file a Form 301 to upgrade Station WMDC-FM to Class C3 facilities. Therefore, Copiah County Broadcasting Company is deemed to have abandoned its interest in the Class C3 allotment. As indicated in the *Notice*, upon termination of this proceeding, we shall modify the license of Station WMDC-FM to specify operation on Channel 265A or Channel 225A depending on the action taken in this proceeding.

3. St. Pe' counterproposed the substitution of Channel 265C2 for Channel 225A in lieu of the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi, and modification of its license for Station WJXN(FM) accordingly. Although St. Pe' continues to support the allotment of Channel 265C3 at Utica, it has now determined that Channel 265C2 can be allotted to Utica, providing the community and surrounding area with expanded service. St. Pe' further requests the substitution of Channel 225A for Channel 265C3 at Hazlehurst, Mississippi, and substitution of Channel 267A for Channel 266A at Vicksburg, Mississippi, to accommodate Channel 265C2 at Utica. St. Pe' notes that while the stations at Vicksburg and Hazlehurst have been precluded from full six kilowatt operation, the proposed substitute channels will allow for six kilowatt operation providing expanded service to those communities. According to St. Pe', the proposed substitutions constitute an incompatible channel swap and no competing expressions of interest may be entertained for Channel 265C2 or Channel 265C3, as originally proposed, at Utica, Mississippi. St. Pe' reiterates its pledge that upon issuance of an *Order* implementing the requested substitutions, it will undertake to reimburse the licensees of Stations WMDC(FM), Hazlehurst, Mississippi, and Station WBBV(FM), Vicksburg, Mississippi, for their costs in implementing their respective changes in frequency in accordance with Commission policy.

4. Based on the above information and in response to St. Pe's counterproposal, we believe the public interest would be served by substitution of Channel 265C2 for Channel 225A at Utica, Mississippi. A staff analysis indicates that St. Pe's' proposals for Channel 265C3 and Channel 265C2 do constitute an incompatible channel swap and other expressions of interest should not have been solicited for Channel 265C3 in the *Notice*.[6] Further analysis has determined that Channel 265C2 can be allotted to Utica, Mississippi, at St. Pe's' specified site.[7] In accordance with Section 1.420(g) of the Commission's Rules, we have authorized a modification of the license for Station WJXN(FM), Utica, Mississippi. To accommodate the upgrade at Utica, we shall substitute Channel 225A for Channel 265C3 at Hazlehurst, Mississippi, and modify the license for Station WMDC-FM to specify operation on Channel 225A.[8] We shall also substitute Channel 267A for Channel 266A at Vicksburg, Mississippi, and modify the license for Station WBBV-FM to specify operation on Channel 267A.[9]

5. Bishop Broadcasting, Inc., licensee of Station WBBV-FM, Vicksburg, Mississippi, and Copiah County Broadcasting Company, licensee of Station WMDC-FM, Hazlehurst, did not respond to the *Order to Show Cause* as to why their respective licenses should not be modified to specify operation on Channels 267A and 225A. Accordingly, pursuant to Section 1.87 of the Commission's Rules, Bishop Broadcasting and Copiah County Broadcasting Company are deemed to have consented to the proposed modification.

6. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. *See Circleville and Columbus, Ohio*, 8 FCC Rcd 2d 159 (1967). St. Pe' has stated its intention to reimburse Bishop Broadcasting, Inc. and Copiah County Broadcasting Company for all reasonable expenses incurred in changing their frequencies to the new channels.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 19, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Hazlehurst, Mississippi	225A
Utica, Mississippi	265C2
Vicksburg, Mississippi	254C1, 267A, 294C

8. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WJXN(FM), Utica, Mississippi, IS MODIFIED to specify operation on Channel 265C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

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[6] The *Notice* in MM Docket No. 94-2 proposed the allotment of Channel 282A to Hazlehurst. *See* 9 FCC Rcd 663 (1994). Although Channel 282A can be allotted to Hazlehurst, the channel cannot be utilized at the existing site of Station WMDC-FM. Since it is Commission policy not to require a station to involuntarily relocate its transmitter site, absent consent from the permittee or licensee, we did not consider the use of Channel 282A by Station WMDC-FM at Hazlehurst in our analysis.

[7] The coordinates for Channel 265C2 at Utica are 32-04-01 and 90-20-14.

[8] The coordinates for Channel 225A at Hazlehurst are 31-53-34 and 90-24-08.

[9] The coordinates for Channel 267A at Vicksburg are 32-21-34 and 90-50-08.

9. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station WBBV-FM, Vicksburg, Mississippi, IS MODIFIED, to specify operation on Channel 267A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-890828KD except for the channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-890828KD, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

10. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the construction permit for Station WMDC-FM, Hazlehurst, Mississippi, IS MODIFIED, to specify operation on Channel 225A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-880803LK except for the channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-880803LK, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

11. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Copiah County Broadcasting Station WMDC-FM 902 Highway 51 North Hazlehurst, Mississippi 39083	Bishop Broadcasting, Inc. Station WBBV-FM Rte 1, Box 159A Vicksburg, Mississippi 39180

12. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, St. Pe' Broadcasting, licensee of Station WJXN(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
May 20, 1994

Released: May 20, 1994

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Mel Karmazin, President
Infinity Broadcasting Corporation

Licensee of Radio Station WJFK(AM)
Baltimore, Maryland

Controlling parent of:

Sagittarius Broadcasting Corporation
Licensee of Radio Station WXRK(FM)
New York, New York

Infinity Broadcasting Corporation of Pennsylvania
Licensee of Radio Station WYSP(FM)
Philadelphia, Pennsylvania

Infinity Broadcasting Corporation of
Washington, D.C.
Licensee of Radio Station WJFK(FM)
Manassas, Virginia

600 Madison Avenue, Fourth Floor
New York, New York 10022

Dear Mr. Karmazin:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE to the four above-named licensees (collectively referred to as "Infinity") in the aggregate amount of Two Hundred Thousand Dollars ($200,000), pursuant to Section 503(b) of the Communications Act of 1934, as amended.

The Commission has received a complaint alleging that indecent material was aired during the "Howard Stern Show," as broadcast by WWKB(AM), Buffalo, New York, on December 6, 1993 and January 19, 1994. Based on our experience and your acknowledgements in prior similar circumstances, we presume that the material aired by WWKB(AM) was also aired by the four above-named stations on the same dates as noted above and at a time of day between 6:00 a.m. and 10:00 a.m.[1] Transcripts of portions of the allegedly indecent broadcasts, taken from tapes submitted by the complainant in the WWKB(AM) case, are attached.

Pursuant to 47 U.S.C. Sections 312(a)(6) and 503(b)(1)(D), the Commission has statutory authority to take appropriate administrative action when licensees broadcast material in violation of 18 U.S.C. Section 1464, which provides criminal penalties for anyone who "utters any obscene, indecent or profane language by means of radio communication."

The Commission has defined indecency as language or material that, in context, depicts or describes in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs. *See Infinity Broadcasting Corporation of Pennsylvania*, 2 FCC Rcd 2705 (1987). The United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's authority to restrict the broadcast of indecent material at times when there is a reasonable risk that children may be in the audience. *Action for Children's Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988).

The excerpts from the "Howard Stern Show" reflected in the attached transcripts appear to be indecent in that they contain language that describes sexual activities and organs in patently offensive terms. Because the material aired at times when there was a reasonable risk that children may have been in the audience, it is legally actionable. Thus, it appears that on December 6, 1993 and January 19, 1994, Infinity violated 18 U.S.C. Section 1464 by airing indecent programming on each of the four above-named stations.

Accordingly, pursuant to Section 503(b) of the Communications Act, Sagittarius Broadcasting Corporation, Infinity Broadcasting Corporation of Pennsylvania, Infinity Broadcasting Corporation of Washington, D.C., and Infinity Broadcasting Corporation, licensees of Stations WXRK(FM), New York, New York; WYSP(FM), Philadelphia, Pennsylvania; WJFK(FM), Manassas, Virginia; and WJFK(AM), Baltimore, MD, respectively, are hereby each notified of their separate apparent liability for a forfeiture of Fifty Thousand Dollars ($50,000) for their apparent willful and repeated violations of 18 U.S.C. Section 1464 on the dates set forth above.

In determining the amount of these forfeitures, we find that the same exacerbating considerations concerning Infinity's history of apparent misconduct reviewed in assessing prior forfeitures against Infinity are applicable here. *See Infinity Broadcasting Corporation*, 8 FCC Rcd 2688, 2689-90 and n.3. (1992); *Infinity Broadcasting Corporation*, 8 FCC Rcd 6740, 6741 (1993); *Infinity Broadcasting Corporation*, FCC 94-26, adopted January 31, 1994. As in the earlier actions, we have continued to take account here of the various relevant factors set forth in Section 503(b) of the Communications Act of 1934, as amended, and reflected in our *Policy Statement on Standards for Assessing*

[1] *See, e.g., Infinity Broadcasting Corporation*, 8 FCC Rcd 6740 (1993) (in responding to a letter of inquiry from the Commission as to whether Infinity's stations had aired the same Howard Stern Show material that had been aired by KFBI(FM), Infinity stated "it can be assumed that the substance of these shows was also broadcast by WXRK(FM), WYSP(FM) and WJFK(AM and FM) on those dates ... [and] would have been aired by the aforementioned Infinity stations from approximately 6:00 a.m. to approximately 10:00 a.m." *Id.*).

Forfeitures, 8 FCC Rcd 6215 (1993), *appeal pending sub nom. USTA v. FCC*, Case No. 92-1321 (D.C. Cir. filed July 30, 1992).

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

This letter was adopted by the Commission on May 20, 1994.

BY DIRECTION OF THE COMMISSION

William F. Caton
Acting Secretary

Attachments

Radio Stations: WXRK(FM), New York, NY; WYSP(FM), Philadelphia, PA; WJFK(FM), Manassas, VA; WJFK(AM), Baltimore, MD

Time Broadcast: Between approximately 6:00 and 10:00 a.m.

Material Broadcast: Howard Stern Show

HS: Howard Stern
RQ: Robin Quivers
MV: Male Voice

December 6, 1993

HS: We're allowed to masturbate. What is this? Suddenly I have to wither up and die, be Ward Cleaver.

MV: Friday and Saturday night if it makes you feel better.

HS: Thank you.

RQ: It's just ...

HS: How come, we (unintelligible)

RQ: Oh, you wouldn't do it if she knew?

HS: No. It's embarrassing.

MV: She would like me to, but I can't.

HS: How do you, how do you ...

MV: I could never do it with a woman watching.

HS: What happens? You go to bed at the same time or no?

MV: Sometimes, sometimes not.

HS: Sometimes you go to bed earlier cause we have to get up early.

MV: Whatever.

HS: So you go to bed and then you wake up.

MV: Sometimes I can't get to sleep, you know?

HS: Right, and you wake up in the middle of the night and your wife is laying there sleeping, you can tell when she's asleep.

MV: And you say, well I won't wake her and I'll be very calm.

RQ: Quiet.

MV: And by the end, you're not.

HS: And you do it right, and you do it right in the bed?

MV: Sure.

RQ: You don't even get up?

MV: No, where am I going to go?

HS: Don't you ...

MV: Take a little precaution.

HS: Right.

MV: You know.

RQ: What's the precaution?

MV: A Dixie cup, alright? What do you mean?

RQ: (Laughs)

HS: Takes a Dixie cup.

MV: Some things you don't have to discuss.

HS: He uses his sock. He has a sock.

MV: Then I discard it, I don't put it in the wash.

HS: Right, right, that's good, you bury it in the back yard with Jessica Hahn's lingerie. (Laughter) ...

* * *

January 19, 1994

HS: Alright.

MV: I was, I came home after a band job late at night with this girl that I used to be with once in a while and she performed an act, you know, and I was drunk out of my mind, of course.

RQ: Of course.

HS: Of course.

RQ: And (unintelligible)

MV: The next day, as I recall, I kind of remember as it was happening that there was gagging going on, but this can happen ...

HS: Right.

MV: In such a thing (laughter) and the next, you know what I'm saying? I mean.

RQ: Oh, I know what you're saying, okay?

HS: And she was gagging, right? Okay, yeah, she was gagging ...

MV: So she must have left that night.

HS: And that's because you're such a monster.

MV: Well, of course.

HS: Yeah, right, I've seen you. Nobody's gagging on anything.

MV: So obviously it could have been for some other reason.

HS: Yeah.

MV: Which we'll see it was.

HS: Right, you were all proud of yourself cause she was gagging.

MV: Hey.

HS: Right, you were like, oh.

MV: Probably sobered me up.

HS: Right.

MV: So she left either that morning or the night before, whatever, but then (laughter) I wanted to go to the bathroom.

HS: Oh, oh.

MV: And as I'm sitting there ...

HS: Little vomit.

MV: I look down and in my lower area hair is like hunks.

HS: Hunks? Aw, alright, alright, alright, I don't want to hear about this. Oh my God. Oh, that's disgusting. Oh, you always have to outdo everyone, don't you?

MV: There's Cheerios.

RQ: Hey Gary, your girl just vomited on the bed.

HS: So you look, you look down and there was vomit all over you.

MV: The big chunks.

HS: Wow.

RQ: Oh.

MV: I mean, oh Jesus, it was like the most horrendous thing ever.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

File No. I-T-C-94-317

Application for authority to convey capacity in the HAW-4/TPC-3 Cable System.

ERRATUM

Released: November 7, 1994

By the Chief, Telecommunications Division:

1. On October 13, 1994, the Commission released an Order and Authorization in the above-captioned matter (DA-94-1091). In the paragraph 2 list of circuits to be conveyed, in the third line, the 60 MAUOs in Segments D2 and D3 will be conveyed to ITDC (Taiwan) instead of ITDC (Tokyo), and in the fourth line, the 30 MAUOs in Segments B, D1 and D3 will be conveyed to IDC (Tokyo) rather than ITDC (Tokyo).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ATLANTA TELEPORT L.C. File No. I-T-C-94-464

Application for authority to acquire and operate facilities for provision of communications services between the United States and various overseas points.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: October 28, 1994; Released: November 7, 1994

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED, that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED, that application File No. I-T-C-94-464 IS GRANTED, and Atlanta Teleport L.P. (ATL) is authorized to:

a. establish channels of communication between appropriately licensed U.S. earth stations and INTELSAT satellites, for provision of Intelsat Business Services (IBS), International Television Service and Datanet Service between the United States and the international points listed in Comsat's tariffs for the space segment of these services;

b. lease from Comsat and operate the satellite circuits specified in Appendix A, between appropriately licensed U.S. earth stations and INTELSAT Atlantic and Pacific Ocean Region satellites, connecting with similar facilities between the satellites and the overseas points listed in Appendix A, furnished by its correspondents;

c. lease from PamAmerican Satellite Corp. (PAS) and operate the satellite circuits specified in Appendix B, between appropriately licensed U.S. earth stations and the PAS-1 and PAS-4 satellites, connecting with similar circuits between the satellites and the overseas points listed in Appendix B, furnished by its correspondents;

d. lease from the Columbia/TDRSS International Satellite System (TDRSS) and operate the satellite circuits specified in Appendix C, between appropriately licensed U.S. earth stations and the TDRS-41 and TDRS-174 satellites, connecting with similar circuits between the satellites and the overseas points listed in Appendix C, furnished by its correspondents;

e. establish channels of communications between appropriately licensed U.S. earth stations and U.S. domestic satellites (also Anik satellites for service to Canada, and Mexican domestic satellites for service to Mexico), for provision of authorized transborder services between the United States and the points listed in Appendix D;

f. lease and operate necessary connecting facilities in the United States;

g. lease a one-half interest in and operate any necessary overseas connecting facilities; and

h. use the facilities authorized in b, c, and d, above to provide ATL's regularly authorized services, including switched voice and data, and private line services, between the United States and the points specified in Appendices A, B, and C.

3. IT IS FURTHER ORDERED that neither ATL nor any persons or companies directly or indirectly controlling or controlled by ATL, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which ATL or any persons or companies controlling or controlled by ATL are parties.

4. IT IS FURTHER ORDERED that our authorization of ATL to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and the countries listed in the Appendices -- that is, private lines which originate in the United States and terminate in one of the countries listed in the Appendices or which originate in one of the countries listed in the Appendices and terminate in the United States. In addition, ATL may not -- and ATL's tariff must state that its customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that one of the countries listed in in the Appendices affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559 (1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1994), *petition for reconsideration pending.*

5. IT IS FURTHER ORDERED that the applicant shall file copies of any operating agreements entered into with its foreign correspondents with the Commission within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203 and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. IT IS FURTHER ORDERED that the applicant shall file a separate Section 214 application for any additional circuits it seeks to operate via the PAS-1, PAS-4, TDRS-41 or TDRS-174 satellites.

9. IT IS FURTHER ORDERED that the number of circuits authorized herein for the provision of services via separate satellite systems is subject to limitations on the number of circuits specified under the separate systems policy and applicable consultations under Article XIV(d) of the INTELSAT Agreement.

10. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

APPENDIX A

COUNTRIES TO BE SERVED VIA INTELSAT
(CIRCUITS ARE 64 KBPS)

COUNTRY	NUMBER[1]	COUNTRY	NUMBER	COUNTRY	NUMBER
Argentina	50	Ireland	50	Spain	50
Australia	50	Israel	50	Sweden	50
Austria	50	Italy	50	Switzerland	50
Bahamas	50	Jamaica	50	Syria	50
Barbados	50	Japan	50	Taiwan	50
Belgium	50	Jordan	50	Thailand	50
Bolivia	50	Kenya	50	Trinidad & Tobago	50
Brazil	50	Korea, Republic of	50	Uganda	50
Canada	50	Kuwait	50	United Arab Emirates	50
Czech Republic	50	Lebanon	50	United Kingdom	50
Chile	50	Liechtenstein	50	Uruguay	50
China, People's Republic	50	Luxembourg	50	Vietnam	50
Denmark	50	Malaysia	50	Venezuela	50
Dominican Republic	50	Mexico	50	Yugoslavia	50
Ecuador	50	Morocco	50	Zaire	50
Egypt	50	Netherlands	50		
El Salvador	50	Netherlands Antilles	50		
Ethiopia	50	New Zealand	50		
Finland	50	Nicaragua	50		
France	50	Norway	50		
Germany	50	Panama	50		
Ghana	50	Peru	50		
Greece	50	Philippines	50		
Guatemala	50	Poland	50		
Guinea	50	Portugal	50		
Haiti	50	Romania	50		
India	50	Saudi Arabia	50		
Indonesia	50	Senegal	50		
Iran	50	Singapore	50		
		Somalia	50		
		South Africa	50		

[1] Refers to 64-kbps voice-grade circuits.

APPENDIX B

COUNTRIES TO BE SERVED VIA PAS-1
(NON-INTERCONNECTED)

Up to 10 64-Kbps voice grade circuits between the United States and the following countries:

Ku-band Countries

Anguilla
Austria
Azerbaijan
Bahamas
Belgium
Bermuda
Bosnia-Herzogovenia
British Virgin Is.
Cayman Islands
Czech Republic
Denmark
France
Germany
Greece
Ireland
Italy
Luxembourg
Monaco
Montserrat
Netherlands
Portugal
Romania
Russian Fed.
Somalia
Spain
Sweden
Switzerland
Turks & Caicos Is.
United Kingdom
Yugoslavia

C-band Countries

Anguilla
Argentina
Aruba
Bahamas
Barbados
Barbuda
Bermuda
Bolivia
Brazil
British Virgin Is.
Cayman Islands
Chile
Colombia
Costa Rica
Dominican Rep.
Ecuador
Guatemala
Haiti
Honduras
Jamaica
Mexico
Montserrat
Netherlands Antilles
Panama
Paraguay
Peru
Trinidad and Tobago
Turks & Caicos Is.
Uruguay
Venezuela

COUNTRIES TO BE SERVED VIA PAS-1 (INTERCONNECTED)

Up to 6 64-Kbps voice grade circuits between United States and the countries listed below:

Ku-band Countries:

Azerbaijan
Bahamas
Bosnia-Herzogovenia
Czech Republic
Portugal
Romania
Russian Fed.
Somalia
United Kingdom

C-Band Countries:

Bahamas
Costa Rica
Dominican Republic
Netherlands Antilles
Panama
Peru

APPENDIX C

COUNTRIES TO BE SERVED VIA TDRS SATELLITES
(NON-INTERCONNECTED)

Up to 10 64-Kbps circuits between the United States and the countries listed below (except up to 40 64-Kbps circuits betwee the U,S. and Bosnia-herzogovenia):

TDRS-41	TDRS-174
Austria	Hong Kong
Bahamas	Japan
Belgium	Mexico
Bosnia-Herzogovenia	Philippines
Canada	Republic of Korea
Demnark	
Finland	
France	
Germany	
Ireland	
Israel	
Jamaica	
Liechtenstein	
Luxembourg	
Mexico	
Netherlands	
Portugal	
Somalia	
Sweden	
Switzerland	
Turkey	
United Kingdom	

COUNTRIES TO BE SERVED VIA TDRS SATELLITES
(INTERCONNECTED)

Up to 6 64-kbps circuits between the United States and the countries listed below:

TDRS-41	TDRS-174
Germany	Hong Kong
Bosnia-Herzogovenia	
Somalia	

APPENDIX D

COUNTRIES TO BE SERVED VIA AUTHORIZED U.S. DOMESTIC SATELLITES, MEXICAN MORELOS (AND SOLIDARIDAD SATELLITES AND ANIK SATELLITES

Anguilla	U.S. DomSats
Antigua and Barbuda	U.S. DomSats
Bahamas	U.S. DomSats
Barbados	U.S. DomSats
Belize	U.S. DomSats
Bermuda	U.S. DomSats
British Virgin Islands	U.S. DomSats
Canada	U.S. DomSats, Anik
Cayman Islands	U.S. DomSats
Dominica	U.S. DomSats
Grenada	U.S. DomSats
Grenadines	U.S. DomSats
Mexico	U.S. DomSats, Mexican DomSats
Montserrat	U.S. DomSats
Netherlands Antilles	U.S. DomSats
St. Kitts-Nevis	U.S. DomSats
St. Lucia	U.S. DomSats
St. Vincent	U.S. DomSats
Turks & Caicos	U.S. DomSats
Venezuela	U.S. DomSats

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

LOCAL COMMUNICATIONS NETWORK, INC.

File No. I-T-C-94-465

Application for authority to acquire and operate facilities for provision of communications services between the United States and various overseas points.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: October 28, 1994; Released: November 7, 1994

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED, that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED, that application File No. I-T-C-94-465 IS GRANTED, and Local Communications Network, Inc. (LCN) is authorized to:

a. establish channels of communication between appropriately licensed U.S. earth stations and INTELSAT satellites, for provision of Intelsat Business Services (IBS), International Television Service and Datanet Service between the United States and the international points listed in Comsat's tariffs for the space segment of these services;

b. lease from Comsat and operate the satellite circuits specified in Appendix A, between appropriately licensed U.S. earth stations and INTELSAT Atlantic and Pacific Ocean Region satellites, connecting with similar facilities between the satellites and the overseas points listed in Appendix A, furnished by its correspondents;

c. lease from PamAmerican Satellite Corp. (PAS) and operate the satellite circuits specified in Appendix B, between appropriately licensed U.S. earth stations and the PAS-1 and PAS-4 satellites, connecting with similar circuits between the satellites and the overseas points listed in Appendix B, furnished by its correspondents;

d. lease from the Columbia/TDRSS International Satellite System (TDRSS) and operate the satellite circuits specified in Appendix C, between appropriately licensed U.S. earth stations and the TDRS-41 and TDRS-174 satellites, connecting with similar circuits between the satellites and the overseas points listed in Appendix C, furnished by its correspondents;

e. establish channels of communications between appropriately licensed U.S. earth stations and U.S. domestic satellites (also Anik satellites for service to Canada, and Mexican domestic satellites for service to Mexico), for provision of authorized transborder services between the United States and the points listed in Appendix D;

f. lease and operate necessary connecting facilities in the United States;

g. lease a one-half interest in and operate any necessary overseas connecting facilities; and

h. use the facilities authorized in b, c, and d, above to provide LCN's regularly authorized services, including switched voice and data, and private line services, between the United States and the points specified in Appendices A, B, and C.

3. IT IS FURTHER ORDERED that neither LCN nor any persons or companies directly or indirectly controlling or controlled by LCN, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which LCN or any persons or companies controlling or controlled by LCN are parties.

4. IT IS FURTHER ORDERED that our authorization of LCN to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and the countries listed in the Appendices -- that is, private lines which originate in the United States and terminate in one of the countries listed in the Appendices or which originate in one of the countries listed in the Appendices and terminate in the United States. In addition, LCN may not -- and LCN's tariff must state that its customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that one of the countries listed in in the Appendices affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559 (1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1994), *petition for reconsideration pending.*

5. IT IS FURTHER ORDERED that the applicant shall file copies of any operating agreements entered into with its foreign correspondents with the Commission within 30 days of their execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203 and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. IT IS FURTHER ORDERED that the applicant shall file a separate Section 214 application for any additional circuits it seeks to operate via the PAS-1, PAS-4, TDRS-41 or TDRS-174 satellites.

9. IT IS FURTHER ORDERED that the number of circuits authorized herein for the provision of services via separate satellite systems is subject to limitations on the number of circuits specified under the separate systems policy and applicable consultations under Article XIV(d) of the INTELSAT Agreement.

10. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

APPENDIX A

COUNTRIES TO BE SERVED VIA INTELSAT
(CIRCUITS ARE 64 KBPS)

COUNTRY	NUMBER[1]	COUNTRY	NUMBER	COUNTRY	NUMBER
Argentina	50	Ireland	50	Spain	50
Australia	50	Israel	50	Sweden	50
Austria	50	Italy	50	Switzerland	50
Bahamas	50	Jamaica	50	Syria	50
Barbados	50	Japan	50	Taiwan	50
Belgium	50	Jordan	50	Thailand	50
Bolivia	50	Kenya	50	Trinidad & Tobago	50
Brazil	50	Korea, Republic of	50	Uganda	50
Canada	50	Kuwait	50	United Arab Emirates	50
Czech Republic	50	Lebanon	50	United Kingdom	50
Chile	50	Liechtenstein	50	Uruguay	50
China, People's Republic	50	Luxembourg	50	Vietnam	50
Denmark	50	Malaysia	50	Venezuela	50
Dominican Republic	50	Mexico	50	Yugoslavia	50
Ecuador	50	Morocco	50	Zaire	50
Egypt	50	Netherlands	50		
El Salvador	50	Netherlands Antilles	50		
Ethiopia	50	New Zealand	50		
Finland	50	Nicaragua	50		
France	50	Norway	50		
Germany	50	Panama	50		
Ghana	50	Peru	50		
Greece	50	Philippines	50		
Guatemala	50	Poland	50		
Guinea	50	Portugal	50		
Haiti	50	Romania	50		
India	50	Saudi Arabia	50		
Indonesia	50	Senegal	50		
Iran	50	Singapore	50		
		Somalia	50		
		South Africa	50		

[1] Refers to 64-kbps voice-grade circuits.

APPENDIX B

COUNTRIES TO BE SERVED VIA PAS-1
(NON-INTERCONNECTED)

Up to 10 64-Kbps voice grade circuits between the United States and the following countries:

Ku-band Countries

Anguilla
Austria
Azerbaijan
Bahamas
Belgium
Bermuda
Bosnia-Herzogovenia
British Virgin Is.
Cayman Islands
Czech Republic
Denmark
France
Germany
Greece
Ireland
Italy
Luxembourg
Monaco
Montserrat
Netherlands
Portugal
Romania
Russian Fed.
Somalia
Spain
Sweden
Switzerland
Turks & Caicos Is.
United Kingdom
Yugoslavia

C-band Countries

Anguilla
Argentina
Aruba
Bahamas
Barbados
Barbuda
Bermuda
Bolivia
Brazil
British Virgin Is.
Cayman Islands
Chile
Colombia
Costa Rica
Dominican Rep.
Ecuador
Guatemala
Haiti
Honduras
Jamaica
Mexico
Montserrat
Netherlands Antilles
Panama
Paraguay
Peru
Trinidad and Tobago
Turks & Caicos Is.
Uruguay
Venezuela

COUNTRIES TO BE SERVED VIA PAS-1 (INTERCONNECTED)

Up to 6 64-Kbps voice grade circuits between United States and the countries listed below:

Ku-band Countries:

Azerbaijan
Bahamas
Bosnia-Herzogovenia
Czech Republic
Portugal
Romania
Russian Fed.
Somalia
United Kingdom

C-Band Countries:

Bahamas
Costa Rica
Dominican Republic
Netherlands Antilles
Panama
Peru

APPENDIX C

COUNTRIES TO BE SERVED VIA TDRS SATELLITES
(NON-INTERCONNECTED)

Up to 10 64-Kbps circuits between the United States and the countries listed below (except up to 40 64-Kbps circuits betwee the U,S. and Bosnia-herzogovenia):

TDRS-41	TDRS-174
Austria	Hong Kong
Bahamas	Japan
Belgium	Mexico
Bosnia-Herzogovenia	Philippines
Canada	Republic of Korea
Demnark	
Finland	
France	
Germany	
Ireland	
Israel	
Jamaica	
Liechtenstein	
Luxembourg	
Mexico	
Netherlands	
Portugal	
Somalia	
Sweden	
Switzerland	
Turkey	
United Kingdom	

COUNTRIES TO BE SERVED VIA TDRS SATELLITES
(INTERCONNECTED)

Up to 6 64-kbps circuits between the United States and the countries listed below:

TDRS-41	TDRS-174
Germany	Hong Kong
Bosnia-Herzogovenia	
Somalia	

APPENDIX D

COUNTRIES TO BE SERVED VIA AUTHORIZED U.S. DOMESTIC SATELLITES, MEXICAN MORELOS (AND SOLIDARIDAD SATELLITES AND ANIK SATELLITES

Anguilla	U.S. DomSats
Antigua and Barbuda	U.S. DomSats
Bahamas	U.S. DomSats
Barbados	U.S. DomSats
Belize	U.S. DomSats
Bermuda	U.S. DomSats
British Virgin Islands	U.S. DomSats
Canada	U.S. DomSats, Anik
Cayman Islands	U.S. DomSats
Dominica	U.S. DomSats
Grenada	U.S. DomSats
Grenadines	U.S. DomSats
Mexico	U.S. DomSats, Mexican DomSats
Montserrat	U.S. DomSats
Netherlands Antilles	U.S. DomSats
St. Kitts-Nevis	U.S. DomSats
St. Lucia	U.S. DomSats
St. Vincent	U.S. DomSats
Turks & Caicos	U.S. DomSats
Venezuela	U.S. DomSats

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

LONG BEACH ACQUISITION CORP., d/b/a CABLEVISION INDUSTRIES

Petition for Stay of Local Rate Order of the City of Long Beach, California.

ORDER

Adopted: October 31, 1994; Released: November 7, 1994

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On August 31, 1994, Cablevision Industries ("CVI") filed an Appeal and an Ex Parte Petition for Stay of Enforcement pending Commission review of the local rate order, adopted by the City of Long Beach, California ("City") on August 16, 1994, and pending resolution of a Letter of Inquiry ("LOI")[1] issued by the Commission to CVI, regarding its a la carte package offerings in Long Beach. The City filed its response to CVI's appeal on September 13, 1994. The local rate order establishes a new schedule of basic service and equipment rates and directs CVI to issue refunds, dating back to September 1, 1993, to subscribers for charges in excess of the newly established rates.[2] A principal issue raised by CVI in its petition, and by the Commission in the LOI, centers on the regulatory treatment of CVI's a la carte package offerings.[3]

II. DISCUSSION

2. The Commission has issued numerous LOIs to cable operators regarding the regulatory treatment of a la carte package offerings. CVI's a la carte package offerings in Long Beach are the subject of a LOI currently pending before the Commission. Given that a significant portion of CVI's request for stay and appeal overlap closely with the issues in the pending LOI and in order to minimize subscriber confusion and ensure regulatory consistency pending resolution of the Commission's LOI, we shall grant CVI's request for stay.[4] The stay shall remain in effect until the earlier of: a decision on the merits in the instant appeal by the Commission or ten (10) days after the release of an order or orders by the Commission finally resolving the issues raised in the LOI.

3. During the period of this stay, CVI is ordered to deposit in an interest-bearing escrow account the total amount of money that the City has ordered CVI to refund to its customers. Alternatively, CVI may elect to post a bond for the benefit of the City. The amount of the bond shall be the total amount of money subject to the refund order, plus interest on that amount for a twelve (12) month period from the date of this Order. The bond shall provide that if CVI is unable to fulfill its refund obligations for any reason, then the surety will fulfill that obligation to the City, on behalf of CVI's subscribers.[5]

III. ORDERING CLAUSES

4. Accordingly, IT IS ORDERED, pursuant to §1.45(e) of the Commission's rules (47 C.F.R. §1.45 (e) (1993)), that the local rate order adopted by the City of Long Beach, California is STAYED until the earlier of: a decision on the merits in the instant appeal by the Commission or ten (10) days after the release of an Order or Orders by the Commission finally resolving the issues raised in the Letter of Inquiry.

5. IT IS FURTHER ORDERED that the amount of the refunds required by the City's local rate order SHALL BE PLACED by CVI in an interest-bearing escrow account, OR SHALL BE SECURED by the posting of a bond for the benefit of the City for the amount of money the City has ordered CVI to refund, plus interest. The amount of the bond shall be the total amount of money subject to the refund order, plus interest on that amount for a twelve (12) month period from the date of this Order. Proof of CVI's compliance with this Order shall be filed with the Commission within thirty (30) days of the release of this Order. Interest shall accrue, or be computed, at the prevailing U.S. Internal Revenue Service Rate. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by §0.321 of the Commission's rules (47 C.F.R. §0.321 (1993)).

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[1] Federal Communications Commission Letter of Inquiry, File No. LOI 93-40 (issued December 13, 1993).

[2] Under the Cable Television Consumer Protection and Competition Act of 1992 and the Commission's implementing regulations, local franchising authorities may regulate rates for basic cable service and associated equipment. *See* Cable Television Consumer Protection and competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(b), *as amended*, 47 U.S.C. § 543(b) (1993).

[3] We note that CVI's stay request and appeal raise other contentions with respect to the City's rate order. Those contentions include: (1) whether the City improperly ordered refunds based on FCC Form 393 for the period of May 15, 1994, through July 14, 1994 and; (2) whether the City's rate review process complied with Commission due process rules.

[4] *See, e.g., Warner Communications, Inc.* (Wadsworth, Ohio), DA 94-511 (released May 17, 1994); *Century Cable of Southern California* (La Habra, Calif.), DA 94-513, (released May 17, 1994); *Century Cable of Southern California* (Brea, Calif.), DA 94-512 (released May 17, 1994); *Comcast Cablevision of Mt. Clemens* (Mount Clemens, Michigan), DA 94-857 (released August 9, 1994).

[5] *See Comcast Cablevision of Tallahassee, Inc.* (Tallahassee, Florida), DA 94-107, ¶ 4 (released Sept. 30, 1994); *Paragon Cable* (Grapevine, Texas), DA 94-1072, ¶ 3 (released Sept. 30, 1994). In these orders, the Commission authorized the operator to post a bond in lieu of establishing an escrow account.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

LONG BEACH ACQUISITION CORP., d/b/a CABLEVISION INDUSTRIES

Petition for Stay of Local Rate Order of the City of Signal Hill, California.

ORDER

Adopted: October 31, 1994; Released: November 7, 1994

By the Chief, Cable Services Bureau:

I. INTRODUCTION

1. On August 31, 1994, Cablevision Industries ("CVI") filed an Appeal and an Ex Parte Petition for Stay of Enforcement pending Commission review of the local rate order, adopted by the City of Signal Hill, California ("City") on August 16, 1994, and pending resolution of a Letter of Inquiry ("LOI")[1] issued by the Commission to CVI, regarding its a la carte package offerings in Long Beach. The City filed its response to CVI's appeal on September 13, 1994. The local rate order establishes a new schedule of basic service and equipment rates and directs CVI to issue refunds, dating back to September 1, 1993, to subscribers for charges in excess of the newly established rates.[2] A principal issue raised by CVI in its petition, and by the Commission in the LOI, centers on the regulatory treatment of CVI's a la carte package offerings.[3]

II. DISCUSSION

2. The Commission has issued numerous LOIs to cable operators regarding the regulatory treatment of a la carte package offerings. CVI's a la carte package offerings in Long Beach are the subject of a Commission LOI. Since CVI serves both Long Beach and Signal Hill through an integrated system, the issues raised in Long Beach's LOI are equally applicable to Signal Hill. Given that a significant portion of CVI's request for stay and appeal in Signal Hill overlap closely with the issues in the LOI pending for Long Beach and in order to minimize subscriber confusion and ensure regulatory consistency pending resolution of the Commission's LOI, we shall grant CVI's request for stay.[4] The stay shall remain in effect until the earlier of: a decision on the merits in the instant appeal by the Commission or ten (10) days after the release of an order or orders by the Commission finally resolving the issues raised in the LOI.

3. During the period of this stay, CVI is ordered to deposit in an interest-bearing escrow account the total amount of money that the City has ordered CVI to refund to its customers. Alternatively, CVI may elect to post a bond for the benefit of the City. The amount of the bond shall be the total amount of money subject to the refund order, plus interest on that amount for a twelve (12) month period from the date of this Order. The bond shall provide that if CVI is unable to fulfill its refund obligations for any reason, then the surety will fulfill that obligation to the City, on behalf of CVI's subscribers.[5]

III. ORDERING CLAUSES

4. Accordingly, IT IS ORDERED, pursuant to §1.45(e) of the Commission's rules (47 C.F.R. §1.45 (e) (1993)), that the local rate order adopted by the City of Signal Hill, California is STAYED until the earlier of: a decision on the merits in the instant appeal by the Commission or ten (10) days after the release of an Order or Orders by the Commission finally resolving the issues raised in the Letter of Inquiry.

5. IT IS FURTHER ORDERED that the amount of the refunds required by the City's local rate order SHALL BE PLACED by CVI in an interest-bearing escrow account, OR SHALL BE SECURED by the posting of a bond for the benefit of the City for the amount of money the City has ordered CVI to refund, plus interest. The amount of the bond shall be the total amount of money subject to the refund order, plus interest on that amount for a

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[1] Federal Communications Commission Letter of Inquiry, File No. LOI 93-40 (issued December 13, 1993). Though the LOI was addressed to CVI's Long Beach, California system, Long Beach and Signal Hill are, in fact, one integrated system and therefore the outcome of the Commission's LOI inquiry will affect both systems.

[2] Under the Cable Television Consumer Protection and Competition Act of 1992 and the Commission's implementing regulations, local franchising authorities may regulate rates for basic cable service and associated equipment. *See* Cable Television Consumer Protection and competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992); Communications Act, § 623(b), *as amended*, 47 U.S.C. § 543(b) (1993).

[3] We note that CVI's stay request and appeal raise other contentions with respect to the City's rate order. Those contentions include: (1) whether the City improperly ordered refunds based on FCC Form 393 for the period of May 15, 1994, through July 14, 1994 and; (2) whether the City's rate review process complied with Commission due process rules.

[4] *See, e.g., Warner Communications, Inc.* (Wadsworth, Ohio), DA 94-511 (released May 17, 1994); *Century Cable of Southern California* (La Habra, Calif.), DA 94-513, (released May 17, 1994); *Century Cable of Southern California* (Brea, Calif.), DA 94-512 (released May 17, 1994); *Comcast Cablevision of Mt. Clemens* (Mount Clemens, Michigan), DA 94-857 (released August 9, 1994).

[5] *See Comcast Cablevision of Tallahassee, Inc.* (Tallahassee, Florida), DA 94-107, ¶ 4 (released Sept. 30, 1994); *Paragon Cable* (Grapevine, Texas), DA 94-1072, ¶ 3 (released Sept. 30, 1994). In these orders, the Commission authorized the operator to post a bond in lieu of establishing an escrow account.

twelve (12) month period from the date of this Order. Proof of CVI's compliance with this Order shall be filed with the Commission within thirty (30) days of the release of this Order. Interest shall accrue, or be computed, at the prevailing U.S. Internal Revenue Service Rate. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by §0.321 of the Commission's rules (47 C.F.R. §0.321 (1993)).

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Revised ARMIS Reporting Procedures — AAD 94-102

ORDER

Adopted: October 31, 1994; Released: November 7, 1994

By the Chief, Common Carrier Bureau:

1. On September 17, 1987, the Commission released an *Order* establishing an automated system of reports for collecting financial and operating data from certain local exchange carriers (LECs).[1] Since 1988 we have been collecting one copy of each filing in the Accounting and Audits Division. Because of the increase in demand for ARMIS data by Commission staff and the general public, one copy of each filing is no longer sufficient to meet that demand.[2]

2. To better serve the public, and facilitate efficiency in the ARMIS public reference room, we revise the Reporting Procedures required for all public and unrestricted ARMIS Reports (FCC Reports 43-01, 43-02, 43-03, 43-04, 43-05, 43-06, 43-07, 43-08, 495A and 495B) as shown in the Attachment to this *Order*. Specifically, we increase the number of paper copies and diskettes to be filed with the Accounting & Audits Division from one to two copies for each filing. We also extend ARMIS Reference Room hours for public access to the ARMIS files from 9:00 a.m. to 11:00 a. m. and 2:00 pm. to 4:00 p.m., to 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m.

3. The revision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a modified information collection requirement on the public. Application for approval of these modifications has been made to the Office of Management and Budget (OMB) as prescribed by that Act.

4. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i)-(j), and 201-205, 215, 218, 219 and 220 of the Communications Act of 1934, 47 U.S.C. §§ 151, 154(i)-(j), and 201-205, 215, 218, 219, 220 and Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the revised filing requirements contained herein ARE ADOPTED, and that carriers subject to the reporting requirements that are contained in the ATTACHMENT shall file ARMIS Reports as required therein, effective for filings due on December 31, 1994.

5. Accordingly, IT IS ORDERED, pursuant to Sections 1 and 4(i)-(j) of the Communications Act of 1934, 47 U.S.C. §§ 151 and 154(i)-(j), and Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that the extended ARMIS reference room hours ARE ADOPTED, as contained in the ATTACHMENT, and the ARMIS reference room shall be open to the public as required therein, effective immediately.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

ATTACHMENT

D. Where to File

1. Carriers submitting FCC Reports 43-01, 43-02, 43-03, 43-04, 43-05, 43-06, 43-07, 43-08, 495A and 495B should consult the table below to determine the number of copies of each version that they are required to file and the location to which those copies shall be delivered.

2. Carriers must serve a copy of both the paper report and the automated (*i.e.*, diskette) report with the FCC's contractor for public records duplication, the International Transcription Service (ITS), Room 246, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

	Transmittal Letter	Paper Report	Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division Room 812 2000 L Street, N.W. Washington, D.C. 20554	2	2	2

[1] Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules), 2 FCC Rcd 6283 (1987) (*ARMIS Order*), *modified on recon.*, FCC 88-331, (released Oct. 14, 1988) (*ARMIS Reconsideration Order*).

[2] The Automated Reporting Management Information System (ARMIS) consists of ten reports filed by LECs. These reports contain financial and operating data that assist the Commission in its responsibility to monitor the telephone industry and administer its rules.

FCC Common Carrier Bureau Industry Analysis Division Room 100 1250 23rd Street, N.W. Washington, D.C. 20554	1	1	1
International Transcription Services, Inc. (ITS) Room 246 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

* * * * *

I. Public Information

1. The public and unrestricted versions of the paper FCC Reports 43-01, 43-02, 43-03, 43-04, 43-05, 43-06, 43-07, 43-08, 495A and 495B may be examined by the public from 9:00 a.m. to 12:00 p.m., and from 1:00 p.m. to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the public or unrestricted versions of the paper or automated FCC Reports 43-01, 43-02, 43-03, 43-04, 43-05, 43-06, 43-07, 43-08, 495A and 495B may be obtained from the FCC's contractor for public records duplication, the International Transcription Service at (202) 857-3800.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY

Application for authority to convey capacity in the TCS-1 and U.S.-Bahamas Cable Systems.	File No. I-T-C-94-425
Application for authority to convey capacity in the TAT-11 Cable.	File No. I-T-C-94-426
Application for authority to convey capacity in the Hawaii Tie Cable and the TPC-4 Cable System.	File No. I-T-C-94-466

ERRATUM

Released: November 7, 1994

By the Chief, Telecommunications Division:

1. On October 18, 1994, the Commission released an Order and Authorization in the above-captioned matter (DA-94-1130). In paragraph 2(a), line 3, the word "whole" should be substituted for "one-half", so the phrase should read "a whole interest in 24 MAUOs...."

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. I-T-C-90-081(M)

Application for authority to acquire and operate additional capacity in the HAW-5 Cable System.

ORDER AND AUTHORIZATION

Adopted: October 28, 1994; Released: November 7, 1994

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED, that application File No. I-T-C-90-081(M) IS GRANTED, and American Telephone and Telegraph Company (AT&T) is authorized to modify its ownership of capacity in the HAW-5 Cable System, in accordance with the attached updated ownership schedules to the HAW-5 Construction and Maintenance Agreement (C&MA) and the Commission's HAW-5 Section 214 authorization,[1] to acquire and operate a total of 65 jointly-owned MIUs[2] and 373 wholly-owned MIUs.

3. IT IS FURTHER ORDERED that the authority herein is granted subject to the terms and conditions set forth in the C&MA for the HAW-5 Cable System, as well as any Commission Order granting authority to acquire and operate facilities in the HAW-5 Cable System.

4. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

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[1] *See AT&T*, File No. I-T-C-94-224, 9 FCC Rcd 3071 (1994); *see also* I-T-C-90-081, 5 FCC Rcd 7344 (1990).

[2] A Minimum Unit of Investment in the HAW-5 Cable System, 2.048 mbps or 30 MAUOs.

SCHEDULE B

VOTING INTERESTS IN THE
HAW-5 CABLE SYSTEM

PARTIES	PERCENT
APTT	0.06974
AT&T	56.55499
BELGACOM	0.13947
BT	1.04603
BTE	0.20921
CLEAR	0.13947
DBP	0.41841
EMBRATEL	0.06974
ENTEL	0.06974
FT	0.13947
HKTI	0.48815
HTC	2.09205
IDC	0.20921
ITALCABLE	0.13947
ITDC	0.06974
ITJ	0.06974
KDD	0.55788
MCII	13.31939
MCL	0.62762
NPTT	0.06974
OPTUS	2.02232
PGE	0.34868
PLDT	0.83682
SINGTEL	0.20921
SPRINT	8.50767
ST	0.06974
SWISST	0.13947
TD	0.06974
TELEGLOBE	0.55788
TELINTAR	0.06974
TELMEX	0.06974
TELSTRA	8.22873
TPL	1.46444
TRT/FTC	0.13947
WORLDCOM	0.76709
TOTAL	100.00000

Note: The voting interest percentages set forth in Schedule B are derived from the Segment B ownership interest percentages set forth in Schedule C.

31-May-94

SCHEDULE C

OWNERSHIP INTERESTS AND ALLOCATION OF CAPITAL, OPERATING AND MAINTENANCE COSTS OF SEGMENT B; AND ALLOCATION OF CAPITAL, OPERATING, AND MAINTENANCE COSTS OF SEGMENTS A AND C OF THE HAW-5 CABLE SYSTEM

PARTIES	SEGMENT A	SEGMENT B	SEGMENT C
APTT	0.06974	0.06974	0.06974
AT&T	56.55499	56.55499	56.55499
BELGACOM	0.13947	0.13947	0.13947
BT	1.04603	1.04603	1.04603
BTE	0.20921	0.20921	0.20921
CLEAR	0.13947	0.13947	0.13947
DBP	0.41841	0.41841	0.41841
EMBRATEL	0.06974	0.06974	0.06974
ENTEL	0.06974	0.06974	0.06974
FT	0.13947	0.13947	0.13947
HKTI	0.48815	0.48815	0.48815
HTC	2.09205	2.09205	2.09205
IDC	0.20921	0.20921	0.20921
ITALCABLE	0.13947	0.13947	0.13947
ITDC	0.06974	0.06974	0.06974
ITJ	0.06974	0.06974	0.06974
KDD	0.55788	0.55788	0.55788
MCII	13.31939	13.31939	13.31939
MCL	0.62762	0.62762	0.62762
NPTT	0.06974	0.06974	0.06974
OPTUS	2.02232	2.02232	2.02232
PGE	0.34868	0.34868	0.34868
PLDT	0.83682	0.83682	0.83682
SINGTEL	0.20921	0.20921	0.20921
SPRINT	8.50767	8.50767	8.50767
ST	0.06974	0.06974	0.06974
SWISST	0.13947	0.13947	0.13947
TD	0.06974	0.06974	0.06974
TELEGLOBE	0.55788	0.55788	0.55788
TELINTAR	0.06974	0.06974	0.06974
TELMEX	0.06974	0.06974	0.06974
TELSTRA	8.22873	8.22873	8.22873
TPL	1.46444	1.46444	1.46444
TRT/FTC	0.13947	0.13947	0.13947
WORLDCOM	0.76709	0.76709	0.76709
TOTAL	100.00000	100.00000	100.00000

NOTE:
The percentages set forth above are calculated from MIU assignments shown in Schedule D.

31-May-94

ASSIGNMENT OF MIUS

SCHEDULE D

JOINTLY ASSIGNED MIU CAPACITY IN THE HAW-5 CABLE SYSTEM

PARTIES	CLEAR	ITDC	OPTUS	PLDT	TELSTRA	TPL	SUBTOTAL
APTT	0	0	0	0	1	0	1
AT&T	1	1	4	12	42	5	65
BELGACOM	0	0	0	0	1	1	2
BT	0	0	2	0	10	3	15
BTE	0	0	1	0	2	0	3
DBP	0	0	1	0	4	1	6
EMBRATEL	0	0	0	0	1	0	1
ENTEL	0	0	0	0	1	0	1
FT	0	0	0	0	1	1	2
HKTI	0	0	3	0	4	0	7
IDC	0	0	1	0	2	0	3
ITALCABLE	0	0	1	0	1	0	2
ITJ	0	0	0	0	1	0	1
KDD	0	0	0	0	7	1	8
MCII	1	0	7	0	13	2	23
MCL	0	0	2	0	6	1	9
NPTT	0	0	0	0	1	0	1
PGE	0	0	1	0	0	0	1
SINGTEL	0	0	1	0	1	1	3
SPRINT	0	0	2	0	4	2	8
ST	0	0	0	0	1	0	1
SWISST	0	0	0	0	1	1	2
TD	0	0	0	0	1	0	1
TELEGLOBE	0	0	1	0	5	2	8
TELINTAR	0	0	0	0	1	0	1
TELMEX	0	0	0	0	1	0	1
TRT/FTC	0	0	0	0	2	0	2
WORLDCOM	0	0	2	0	1	0	3
SUBTOTAL	2	1	29	12	116	21	181

WHOLLY ASSIGNED MIU CAPACITY

PARTIES	
AT&T	373
HTC	15
MCII	84
PGE	2
SPRINT	57
TELSTRA	1
WORLDCOM	4
SUBTOTAL	536

NOTE: THE NOTIONAL CAPACITY OF SEGMENT B OF THE HAW-5 CABLE SYSTEM IS 717 MIUS.

SUMMARY

PARTIES	JOINTLY ASSIGNED	WHOLLY ASSIGNED	HALF MIU INTERESTS
APTT	1	0	1
AT&T	65	373	611
BELGACOM	2	0	2
BT	15	0	15
BTE	3	0	3
CLEAR	2	0	2
DBP	6	0	6
EMBRATEL	1	0	1
ENTEL	1	0	1
FT	2	0	2
HKTI	7	0	7
HTC	0	15	30
IDC	3	0	3
ITALCABLE	2	0	2
ITDC	1	0	1
ITJ	1	0	1
KDD	8	0	8
MCII	23	84	191
MCL	9	0	9
NPTT	1	0	1
OPTUS	29	0	29
PGE	1	2	5
PLDT	12	0	12
SINGTEL	3	0	3
SPRINT	8	57	122
ST	1	0	1
SWISST	2	0	2
TD	1	0	1
TELEGLOBE	8	0	8
TELINTAR	1	0	1
TELMEX	1	0	1
TELSTRA	116	1	116
TPL	21	0	21
TRT/FTC	2	0	2
WORLDCOM	3	4	11
TOTAL	362	536	1434

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-125

In the Matter of

Amendment of Section 73.202(b), RM-8534
Table of Allotments,
FM Broadcast Stations.
(Fredericksburg and Helotes, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: October 26, 1994; Released: November 7, 1994

Comment Date: December 29, 1994
Reply Comment Date: January 13, 1995

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by October Communications Group, Inc. ("petitioner"), requesting the reallotment of Channel 266C from Fredericksburg, Texas, to Helotes, Texas, and the modification of Station KONO-FM's license to specify Helotes as its community of license. Petitioner states that it will apply for the channel, if reallotted to Helotes.

2. Petitioner seeks modification of Station KONO-FM's license pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. Fredericksburg and Helotes are located less than the required 290 kilometers for co-chanel Class C stations. Therefore, the use of Channel 266C at Helotes is mutually exclusive with its use at Fredericksburg. Petitioner contends that the adoption of its proposal would result in a preferential arrangement of allotments since it would provide Helotes with its first local aural transmission service. Fredericksburg would not lose its sole local aural transmission service as it would continue to receive transmission service from fulltime AM Station KNAF, operating on 910 KHz.

3. Petitioner describes Helotes as a growing community with a population of 1,535 persons.[1] Helotes is also incorporated, with its own police and fire departments. In addition, petitioner states that one of the elementary schools of the Northside Independent School District is located within the Helotes city limits, with a student population of over 400 children, that there are two volunteer libraries and numerous places of worship. As to local businesses, we are told that Helotes has three gas stations, twelve restaurants, a dry-cleaning store, a feed store, a florist, a video store, a taxidermy shop and a grocery-pharmacy store. Finally, petitioner notes that the following non-profit organizations are represented in Helotes: 4-H Club, American Association of Retired Persons, Lions and Lioness' Club, Optimist Club and the Casa Helotes Senior Citizens Center.

4. Based on the information before us, we are unable to tentatively conclude that petitioner's proposal would result in a preferential arrangement of allotments. It is true that the reallotment of Channel 266C to Helotes would provide that community with its first local aural transmission service. However, we note that Fredericksburg is substantially larger than Helotes, with a population of 6,934 persons, and is also the seat of Gillespie County. Further, while neither community is located within an Urbanized Area, Helotes is located within the Rand McNally San Antonio Metropolitan Area and is considered to be well-served with at least five aural reception services. Finally, petitioner is not seeking a change of transmitter site and thus there would be no improvement in the service already provided by Station KONO-FM, which already covers Helotes with a 70 dBu city-grade signal. *See Van Wert, Ohio and Monroeville, Indiana*, 7 FCC Rcd 6519 (1992).

5. However, we believe the public interest would be served by soliciting further comments on this proposal since it could provide Helotes with its first local aural transmission service, if granted. We also propose to modify petitioner's license for Station KONO-FM to specify Helotes as its community of license. In compliance with Section 1.420(i), we will not accept competing expressions of interest in use of Channel 266C at Helotes. Channel 266C can be allotted to Helotes in compliance with the Commission's minimum distance separation requirements at Station KONO-FM's presently licensed transmitter site, which is 32.2 kilometers (20 miles) northwest of Helotes.[2]

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Fredericksburg, Texas	266C	–
Helotes, Texas	–	266C

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **December 29, 1994**, and reply comments on or before **January 13, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission,

[1] All population figures are taken from the 1990 U.S. Census.
[2] The coordinates for Channel 266C at Helotes are 29-50-26 North Latitude and 98-49-32 West Longitude.

Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

John Joseph McVeigh, Esq.
Multinational Legal Services, P.C.
11 Dupont Circle, Suite 700
Washington, D.C. 20036
(Counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1),303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-243

In the Matter of

Amendment of Section 73.202(b),	RM-8314
Table of Allotments,	RM-8379
FM Broadcast Stations.	
(Bagley and Park Rapids,	
Minnesota)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 1, 1994; Released: November 8, 1994

By the Acting Chief, Allocations Branch:

1. In response to a petition filed by Roger Paskvan ("Paskvan"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 6645 (1993), seeking the allotment of Channel 223A at Park Rapids, Minnesota, as that community's second FM broadcast service. Paskvan filed comments supporting the allotment of Channel 223A at Park Rapids. In response to the *Notice*, Edward P. DeLaHunt ("DeLaHunt") filed a counterproposal.[2] Paskvan filed reply comments.

2. DeLaHunt's counterproposal requests allotment of Channel 222C3 to Bagley, Minnesota.[3] DeLaHunt states that Bagley has a 1990 U.S. Census population of 1,388 persons and that its proposal will provide a first local transmission service to the community while Paskvan seeks a second FM service for Park Rapids. In keeping with well established Commission policy regarding first local service priorities, DeLaHunt argues that the community of Bagley should be preferred over Park Rapids.

3. In reply comments, Paskvan states that he has no objection to allotment of a channel at Bagley provided such allotment does not preclude an allotment at Park Rapids. Paskvan states that its engineering studies indicate several other channels are available for allotment at Park Rapids consistent with all allotment criteria. Accordingly, Paskvan contends that since alternate channels are available, the Commission should not permit the mere submission of a counterproposal to slow in any way a new allotment for Park Rapids.

4. After consideration of the information filed in this proceeding, we believe the public interest would be served by the allotment of Channel 223A at Park Rapids. Channel 223A can be allotted to Park Rapids in compliance with the Commission's spacing requirements without a site restriction.[4] In response to the counterproposal, we believe it would be in the public interest to allot a channel to Bagley. A staff analysis has determined that Channel 244C3 can be allotted to Bagley, Minnesota, in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules without a site restriction.[5] Canadian concurrence has been obtained for the allotment of Channel 223A, Park Rapids and Channel 244C3 at Bagley.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 23, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Bagley, Minnesota	244C3
Park Rapids, Minnesota	223A, 248C1

6. The window period for filing applications for Channel 244C3 at Bagley, Minnesota, and Channel 223A at Park Rapids, Minnesota, will open on **December 23, 1994**, and close on **January 23, 1995**.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The community of Bagley has been added to the caption.
[2] The counterproposal was put on public notice on November 30, 1993, Report No. 1988.
[3] DeLaHunt Broadcasting Corporation is the licensee of FM Station KDKK, Channel 248C1, Park Rapids, Minnesota.
[4] The coordinates for Channel 223A at Park Rapids are 46-55-20 and 95-03-30.
[5] The coordinates for Channel 244C3 at Bagley are 47-31-18 and 95-23-53.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-183

In the Matter of

Amendment of Section 73.202(b),	RM-8276
Table of Allotments,	RM-8337
FM Broadcast Stations.	RM-8338
(Shelley and Sun Valley, Idaho)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 1, 1994; Released: November 8, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Sun Valley Fine Arts Broadcasting ("SVFAB"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 4492 (1993), proposing the allotment of Channel 298C to Sun Valley, Idaho, as that community's third local FM service. In response to the *Notice*, SVFAB filed comments restating its intention to apply for Channel 298C, if allotted to Sun Valley. In addition, Native Broadcasters of Idaho ("NBI") filed a counterproposal requesting the allotment of Channel 298C to Shelley, Idaho, as that community's first local transmission service (RM-8337) and SVFAB filed a counterproposal requesting the allotment of Channel 296C to Shelley, Idaho (RM-8338).[2] NBI filed reply comments. The proposals for Channel 298C at Shelley and Sun Valley are mutually exclusive.

2. NBI in its counterproposal and reply comments urges the Commission to allot Channel 298C to Shelley, Idaho. NBI states that Shelley is an incorporated community with a population of 3,300 persons,[3] which is six times larger than Sun Valley's population (545 persons). NBI argues that the Commission must compare the relative needs of Shelley for a first local service and Sun Valley for a third local service, citing *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). NBI states that Sun Valley has three FM stations licensed to it (KECH-FM, KSKI-FM), and KWRV-FM a noncommercial educational service, whereas Shelley does not have any local FM service.

3. SVFAB in its comments and counterproposal urges the Commission to allot Channel 296C, 298A or 296A to Shelley, Idaho, which would not be mutually exclusive with the allotment of Channel 298C to Sun Valley.

4. After reviewing the pleadings before us, we believe the public interest would be served by providing Shelley with its first local FM transmission service and Sun Valley with its third local FM service. An engineering study shows that both communities can be accommodated since channels are available for each community. However, we find that the public interest would be better served by allotting Channel 298C to Sun Valley, Idaho and allotting Channel 300C to Shelley, Idaho. The allotment of Channel 300C to Shelley requires only one Class D translator Station to shutdown, whereas the allotment of Channel 296C or 298C to Shelley would require at least three Class D translator stations to shutdown, and the allotment of Channel 298C to Sun Valley does not require the shutdown of any translator station. Even though translators are considered to be secondary services and are not protected against the initiation of full service facility, the allotment of Channel 300C to Shelley better serves the public interest.

TECHNICAL SUMMARY

5. Channel 298C can be allotted to Sun Valley in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at coordinates 43-41-48 and 114-21-00. Channel 300C can be allotted to Shelley in compliance with the Commission's minimum distance separation requirements with a site restriction of 53 kilometers (32.9 miles) north at coordinates 43-51-09 and 112-03-09.

6. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 23, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Shelley, Idaho	300C
Sun Valley, Idaho	237C3, 279C, 298C

7. The window period for filing applications for Shelley and Sun Valley, Idaho, will open on **December 23, 1994**, and close on **January 23, 1995**.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 418-2700.

[1] The community of Shelley, Idaho, has been added to the caption.
[2] Public Notice of the counterproposals was given on September 23, 1993, Report No. 1970.
[3] Population figures are taken from the 1990 U.S. Census.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Application of

ORBITAL	File Nos. 22-DSS-P-90(20)
COMMUNICATIONS	9-DSS-LA-94
CORPORATION	10-DSS-AMEND-94

for Authority to Construct,
Launch and Operate a
Non-Voice, Non-Geostationary
Mobile-Satellite System

ORDER AND AUTHORIZATION

Adopted: October 20, 1994; Released: October 27, 1994

By the Commission:

I. INTRODUCTION

1. Orbital Communications Corporation (ORBCOMM) has filed an application to construct, launch and operate a non-voice, non-geostationary (NVNG) mobile-satellite service (MSS) system in certain frequency bands below 1 GHz.[1] Public notice of this application was given on April 11, 1990,[2] and 15 parties filed comments.[3] STARSYS Global Positioning, Inc. (STARSYS) and LEOSAT Corporation (LEOSAT) filed Petitions to Deny ORBCOMM's application,[4] and ORBCOMM replied.[5] On December 22, 1993, ORBCOMM further amended its application,[6] and STARSYS opposed this amendment.[7] For the reasons discussed below, we grant ORBCOMM's application, as amended, subject to certain conditions.

II. BACKGROUND

2. ORBCOMM filed the first domestic application to construct a low-Earth orbiting (LEO) MSS system on February 28, 1990, nearly three years before spectrum was allocated to this new service. When a second application was filed by STARSYS several months later, the Commission set a cut-off date for the filing of applications to be considered concurrently with these proposals, thereby establishing the first processing round of what would become the NVNG mobile-satellite service. Our licensing of the first U.S. commercial LEO MSS system by this Order and Authorization is the culmination of this process.

3. At the time of the cut-off for competing applications in the affected frequency bands, ORBCOMM's application was mutually exclusive with that of STARSYS.[8] In an effort to resolve this mutual exclusivity, and to establish technical rules that best serve the needs of the applicants and the Commission, we announced our intent to convene an advisory committee to negotiate sharing proposals and technical rules to govern this new satellite service. Immediately prior to the first meeting of this negotiated rulemaking committee, the applicants, ORBCOMM, STARSYS and VITA, independently reached agreement on a sharing program that would permit all three to implement their systems, and leave spectrum available for future entry. They submitted a Joint Sharing Agreement outlining this proposal on the eve of the advisorycommittee's deliberations.[9] Using this sharing plan as a starting point, the applicants, the Commission and existing users of the same frequency bands and adjacent bands met to address other sharing and operational concerns and to propose technical rules to resolve them. Final rules based on the proposals of this committee[10] were adopted in October 1993,[11] and ORBCOMM and the other applicants amended their applications to comply with them.

4. ORBCOMM, a Delaware corporation, is a wholly owned subsidiary of Orbital Sciences Corporation (OSC), also a Delaware corporation, with its headquarters in Dulles, Virginia. OSC is wholly owned by United States citizens. By its application, ORBCOMM seeks to implement a worldwide NVNG mobile-satellite system. Potential services to be offered include a wide range of data

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[1] Application of Orbital Communications Corporation, dated February 28, 1990 (ORBCOMM Application). This application has been amended on a number of occasions (ORBCOMM Amendment, dated September 21, 1991; ORBCOMM Application Amendment and Supplement, dated December 22, 1993) and launch and operating authority were requested at the time final system amendments were filed in December 1993.

[2] Report No. DS-953 at 2.

[3] Comments supporting ORBCOMM's application were filed by thirteen parties. Additional comments were filed by Comsat and Geostar Messaging Corporation (Geostar).

[4] Petition to Deny Subject to Amendment to Application, May 14, 1990 (STARSYS); Petition to Deny, June 17, 1991 (LEOSAT). LEOSAT filed an NVNG application that was dismissed for failure to meet the cut-off deadline for the submission of competing applications. *See* para.2, *infra*.

[5] Reply Comments of Orbital Communications Corporation, May 29, 1990; Reply Comments of Orbital Communications Corporation, July 17, 1991.

[6] ORBCOMM Application Amendment and Supplement, *supra*.

[7] Opposition to Amendment and Request for Placement of Same on Public Notice (January 14, 1994): Opposition to ORBCOMM Amendment (March 4, 1994). ORBCOMM replied on January 27, 1994 and March 21, 1994, respectively. dbX Corporation (dbX) filed Reply Comments in response to STARSYS's March 4 Opposition.

[8] The application of Volunteers in Technical Assistance (VITA), which was also filed in response to the cut-of notice, was not mutually exclusive with either ORBCOMM's or STARSYS's proposal, but could not initially co-exist with both systems. VITA was awarded a Pioneer's Preference in this proceeding. *See* Report and Order in ET Docket No. 92-280, 8 FCC Rcd 1812 (1993). Granting ORBCOMM a license will not impact our action with regard to VITA's application. *See* n.27, *infra*.

[9] Jointly Filed Supplemental Comments of ORBCOMM, VITA and STARSYS, filed August 7, 1992 (the Joint Sharing Agreement).

[10] Report of the Below 1 GHz LEO Negotiated Rulemaking Committee, CC Docket 92-76 (September 16, 1992).

[11] Report and Order in CC Docket No. 92-76, 8 FCC Rcd 8450 (1993) (NVNG Order).

acquisition, two-way messaging, tracking and position determination services.[12] Mobile transceivers designed to be used with this system will be hand-held, and are expected to cost between $50 and $400, depending upon individual features. Service costs are anticipated by the company to be between $.10 and $.50 per message. ORBCOMM states that it will offer its satellite system capacity in bulk to resellers on a noncommon carrier basis.[13]

5. The ORBCOMM constellation will consist of 36 low-Earth orbiting satellites, operating in four inclined orbital and two polar planes.[14] These technically identical satellites are designed to operate in the 148 MHz-149.9 MHz (uplink) and 137 MHz-138 MHz (downlink) frequency bands, and will have a four year design life. The satellite system will be capable of processing 60,000 messages per hour in each of the inbound and outbound directions. ORBCOMM's system will employ a frequency division multiple access (FDMA) modulation technique. In addition, the company has developed a dynamic channel activity assignment system (DCAAS), which is designed to scan potential uplink channels and assign subscriber traffic to frequencies that are not currently in use by other services. This ability to avoid assignment of traffic to occupied frequencies makes it possible for ORBCOMM to operate effectively, and efficiently, in frequencies that are shared by other services. Telemetry, tracking and control functions will be handled from earth stations located in Arizona, Georgia, New York and Virginia.[15] The company's satellite control and network control centers will be co-located at ORBCOMM's facility in Dulles, Virginia.

6. ORBCOMM has commenced construction of the first two satellites in its proposed system pursuant to a grant of an experimental space station authorization, and a waiver of our prior construction permit requirement.[16] It proposes to launch these two satellites around the end of 1994, and to launch 24 additional satellites within 22 months of the grant of its license. Upon deployment of these first 26 satellites, the ORBCOMM constellation will be capable of providing nearly full-time service throughout the United States. The company plans to launch its entire system within four years of system authorization.[17]

7. STARSYS and LEOSAT have petitioned to deny the ORBCOMM application, as originally filed, on the grounds that the FDMA modulation method chosen by the company would preclude sharing with other NVNG MSS systems.[18] As the Joint Sharing Agreement confirms, ORBCOMM's proposed method of modulation will not preclude entry by other systems. Indeed, our NVNG Order discusses at some length the ability of the existing three applicants not only to co-exist, but to leave spectrum available for future entry as well. Thus, because grant of ORBCOMM's application does not preclude use of this spectrum by competing systems, these two Petitions will be dismissed. STARSYS has also opposed the most recent amendment to ORBCOMM's application,[19] alleging a number of technical and legal deficiencies that are discussed below.

III. DISCUSSION

A. Financial Qualification.

8. Section 25.142(a)(4) of the Commission's Rules, 47 C.F.R. §25.142(a)(4), sets forth the financial qualifications that NVNG applicants must satisfy. Specifically, an applicant for space station authority must demonstrate that it possesses the financial resources to construct and launch expeditiously the first two satellites in its proposed system, and to operate those satellites for one year.[20] In its amended application, ORBCOMM has submitted a revised budget of $77 million, which covers the investment and expenses required to construct and operate the first two satellites of its system through the first year of operation. Of that $77 million, the company states that it has already spent approximately $57 million to construct facilities authorized by its experimental license and the waiver of Section 319(d) of the Act, 47 U.S.C. §319(d), that was granted to ORBCOMM in 1992. The remaining $20 million will be supplied by OSC.

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[12] For more complete details of the services to be offered, *see* ORBCOMM's Application at pp.24-58.

[13] In our NVNG Order, we found that NVNG space station operations are not necessarily common carrier in nature. *See* para. 27, *infra*.

[14] The ORBCOMM constellation will be placed into low-earth orbit at 775 kilometers above the Earth. The company's amended space station proposal increases from 20 to 36 the number of satellites in the complete constellation. ORBCOMM claims that the addition of a fourth orbital plane and 16 satellites will make its system much more accessible to subscribers, and will also provide more reliable coverage. For example, under this revised plan, the loss of a system satellite will reduce coverage of the continental United States by less than 3%.

[15] The Arizona and New York stations have already been constructed pursuant to ORBCOMM's experimental earth station licenses.

[16] At the time it filed its original Application in February 1990, ORBCOMM requested a waiver pursuant to Section 319(d) of the Communications Act, 47 U.S.C. §319(d), to allow it to commence construction of its system. That request was renewed in October 1992, and was granted in November 1992. *See* Letter from Chief, Domestic Facilities Division to Albert Halprin, Counsel to ORBCOMM, dated November 24, 1992. On May 6, 1993, STARSYS filed a Petition to Rescind Waiver Granted to Orbital Communications Corporation Pursuant to Section 319(d) of the Communications Act, on the grounds that such an action was beyond the scope of the Common Carrier Bureau's delegated authority. STARSYS also alleged procedural infirmities. By our action today, we grant to ORBCOMM a permit to commence construction of its system. STARSYS's Petition is therefor moot, and is dismissed.

[17] In the NVNG Order, we noted that, as a general rule, we will require initial system satellites to be launched within 4 years of authorization, and entire systems to be operational within 6 years. ORBCOMM proposes to launch its first two satellites virtually immediately, and its entire system within four years of license grant, considerably ahead of our proposed deadlines. To assure sufficient time for implementation of this first NVNG system, however, we will impose on ORBCOMM the system milestones specified in our NVNG Order. This does not preclude the earlier implementation of ORBCOMM's system.

[18] *See* n.4, *supra*.

[19] *See* n.7, *supra*.

[20] Section 25.142(a)(4) incorporates, as part of its financial qualification requirements, Section 25.140(c),(d) and (e) of the Commission's Rules, 47 C.F.R.§25.140(c), (d) and (e). Section 25.140 specifies the necessary financial information that must be submitted to meet the financial qualification requirements.

9. STARSYS alleges that ORBCOMM has failed to provide the Commission with information sufficient to assure its compliance with our financial requirements. In particular, STARSYS believes that press releases have presented "ambiguous" and "contradictory" statements surrounding the involvement of Teleglobe, Inc., a Canadian company, in the financing of ORBCOMM's system, and suggests that ORBCOMM could be attempting to conceal important aspects of its financing arrangements. ORBCOMM counters that it has already disclosed to the Commission the general nature of its relationship with Teleglobe, Inc., and alleges that STARSYS is merely using this proceeding to force disclosure of detailed proprietary information.[21]

10. We find on the basis of the record before us that ORBCOMM is in compliance with our financial qualification rules. The company has described in sufficient detail its system costs, has certified the expenditure of $56.6 million on its system to date, and has established the source of its remaining $20.4 million requirement. Section 25.140(d)(1) accepts as sufficient proof of financial preparedness a balance sheet evidencing available assets as of the latest fiscal year. OSC has provided a certified balance sheet showing current assets significantly in excess of those required by ORBCOMM to complete construction of the first two satellites of the ORBCOMM system and to operate those satellites for one year. Further, OSC has committed to making the necessary funds available to ORBCOMM. As STARSYS has provided us with no evidence to refute this showing, we find that ORBCOMM is financially qualified to be a Commission licensee in the NVNG mobile-satellite service.

11. The thrust of STARSYS's challenge to ORBCOMM's financial qualifications appears to concern the actual control or ownership of ORBCOMM. ORBCOMM has previously disclosed that part of the funding of its project has been provided to OSC by a subsidiary of Teleglobe, Inc., in conjunction with an agreement that created a joint venture partnership between ORBCOMM and Teleglobe Mobile to market ORBCOMM's services. ORBCOMM continues to assure us that Teleglobe, by virtue of this joint venture partnership, has not acquired, and will not acquire, any ownership interest in or control of ORBCOMM. STARSYS has failed to provide evidence to the contrary. Thus, we find that ORBCOMM is legally and financially qualified to be a Commission licensee.

B. Technical Qualification.

12. STARSYS has also raised various technical objections to the ORBCOMM application, which are addressed at length below. In addition to these specific matters, we have reviewed the ORBCOMM application, as amended, on an overall basis and find that the company has supplied the Commission with all necessary and relevant technical information, and that its proposed operations conform to the rules governing the NVNG mobile-satellite service.

13. *Downlink Frequency Band (137-138 MHz).* As an initial matter, STARSYS objects to ORBCOMM's use of both right-hand circular polarization (RHCP) and left-hand circular polarization (LHCP) for its satellite-to-subscriber downlink channels.[22] The STARSYS gateway will operate in this same frequency band on a LHCP channel. If ORBCOMM were to use only RHCP for its downlinks, STARSYS states, this opposite polarization could effectively eliminate interference between the two systems. STARSYS asserts, however, that ORBCOMM's use of both LHCP and RHCP channels for its own system will substantially, and adversely, affect STARSYS's ability to provide its intended quality of service to the public. In an effort to mitigate this potential interference, the parties negotiated a further sharing arrangement, under which ORBCOMM has agreed to shut down any offending LHCP downlink transmitters when they come within the mainbeam of STARSYS's domestic gateway earth station antenna. To further lessen the possibility of co-polarization interference, ORBCOMM also agreed as part of the negotiated arrangement to modify its frequency plan to locate its LHCP channels in the lower portion of the 137-138 MHz band. The parties have proposed a condition to ORBCOMM's license that embodies the terms of this coordination agreement.[23] This condition is set forth at paragraph 36, *infra*.

14. The precise degree of separation actually necessary to avoid unacceptable intersystem interference cannot be determined until both systems are operational, and tests can be conducted. Thus, until a mutually acceptable angle of separation is established, as ORBCOMM has agreed, we will require ORBCOMM to cease domestic LHCP operations when its space stations are within 40 degrees of STARSYS's gateway earth station main beam. While we believe that this separation angle is higher than will actually be necessary to protect the STARSYS system, it is an angle that, according to STARSYS, will afford sufficient protection to its operations. Without actual knowledge of STARSYS's gateway antenna performance, we cannot devise a more precise estimate. As their systems develop, ORBCOMM and STARSYS should attempt to refine further this separation angle, so as not to impede each others' operations unnecessarily while a final accord is under negotiation.[24]

15. In the course of negotiating this further sharing arrangement in the 137-138 MHz band, the question has been raised whether this operating requirement should, or may, be applied to the operation of the NVNG systems outside of the United States.[25] We believe it to be premature to attempt to resolve international sharing

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[21] ORBCOMM contends that OSC's relationship with Teleglobe, Inc. is described in OSC's Securities and Exchange Commission filing of December 9, 1993 (Orbital Sciences Corporation, SEC Registration No. 33-71196). *See also* ORBCOMM's Application Amendment and Supplement, *supra* n.1 , at fn.9.

[22] dbX, in Reply, joins in this objection.

[23] *See* Letters to Domestic Facilities Division from counsel for ORBCOMM (August 12, 1994) and from counsel for STARSYS (August 22, 1994).

[24] As always, we assume that the parties will pursue coordination agreements promptly and in good faith. Under the terms of the license condition proposed by the parties, the Commission will determine the requisite degree of angular separation in the event that the parties are unable to reach an accord.

[25] *See* Letter to Domestic Facilities Division from counsel for STARSYS, *supra* n.23. This question was also raised in regard to other proposals set forth in the Joint Sharing Agreement. To

difficulties between STARSYS and ORBCOMM before they actually arise. Regarding the imposition of the jointly negotiated coordination condition on ORBCOMM's license, it is clear that operating conditions may differ markedly from one jurisdiction to the next, as may system traffic demands. A coordination technique that is effective domestically may be unnecessary or ineffective elsewhere. Thus, while we will require ORBCOMM to operate in accordance with the condition proposed above when operating within the United States, we do not wish unnecessarily to constrain our future flexibility to implement coordination methods that are most appropriate to the given set of circumstances. If and when coordination issues between STARSYS and ORBCOMM arise outside of our borders, we will, of course, consider extending this condition to ORBCOMM's operations if it appears to be the most appropriate response. Further, we will not impose a global bandsharing plan on U.S. licensees at this time. As we discussed in our Report and Order in the MSS Above 1 GHz proceeding, we do not believe it is appropriate for the United States to impose global bandsharing restrictions, which will directly impact the ability of other countries to access these LEO systems, absent indications from these countries regarding their planned use of these frequency bands.[26]

16. STARSYS also objects to ORBCOMM's proposal to operate acrossall available downlink frequency channels for testing during the "drift" period following the launch of its satellites. ORBCOMM, which intends initially to launch its satellites in groups of eight, states that it will take between one and two months for these satellites to maneuver, or drift, into their proper positions within the satellite constellation. Until the satellites are properly spaced in each orbit, they may bunch together too closely for effective operations. For example, during the drift period, the company alleges that for approximately 20% of the time, three of its satellites, each in a different orbital plane, will be simultaneously visible to a given earth terminal. Unless these three satellites operate on different downlink frequencies, they will interfere with each other. These three satellites must also avoid operation on frequencies being used by other ORBCOMM satellites in the same orbital plane with which they have overlapping coverage areas. The total number of satellites that must be considered in this intra-system coordination effort is thus nine, *i.e.* the three satellites simultaneously in view of the user population, plus the six satellites nearest in the same orbital plane to these satellites. ORBCOMM states that because each satellite has two downlink transmitters, a total of 18 downlink channels are necessary to avoid intra-system interference. STARSYS opposes this plan, arguing primarily that it violates the Joint Sharing Agreement.

17. ORBCOMM's agreement to cease co-polarization operations when in view of STARSYS's gateway mainbeam has essentially eliminated any concern that ORBCOMM's downlink operations will cause unacceptable interference into STARSYS's system. For this reason alone, it does not appear that the use of all downlink channels during the drift phase of the ORBCOMM satellites will increase the level of interference into STARSYS's operations in this band. Other considerations also support grant of ORBCOMM's request to operate on all available downlink frequencies during the drift period. In a fully implemented ORBCOMM environment, each STARSYS gateway station will "see" at most three ORBCOMM satellites for approximately 20% of the time. Assuming that these satellites are transmitting from different orbital planes, the total number of downlink channels that would be visible to a STARSYS gateway earth station, under ordinary operating circumstances, would be six (*i.e.* two channels in each of three orbital planes). ORBCOMM's proposal to use all available channels would increase this number to eighteen. This three-fold increase could raise the total level of interference into STARSYS's gateway operations. Since, however, ORBCOMM has agreed to turn off all co-polarized downlink channels when its satellites are within an offending angle of STARSYS's gateway earth station antenna mainbeam, this procedure will eliminate any co-polarized unacceptable interference from the ORBCOMM system. The remaining channels are cross-polarized, and, thus, should cause no unacceptable interference. Potential interference is further mitigated by the fact that this authorization would only apply during the testing period, when the channels will not be heavily used. ORBCOMM will not be permitted to use all available downlink channels when it commences the provision of commercial service. Moreover, it is unlikely that all drifting satellites will be active simultaneously on all available channels during the testing period. In sum, because use of these channels is likely to improve ORBCOMM's system performance and operations, and is unlikely to cause any unacceptable interference into STARSYS's system, we will allow ORBCOMM to use all 18 available downlink channels for satellite testing during the drift period.[27]

18. STARSYS finally alleges that ORBCOMM's proposal to increase the size of its constellation from 20 to 36 satellites and to lower its satellite orbits,[28] in conjunction with a proposed increase in each satellite transmitter's equivalent isotopically radiated power (EIRP),[29] will result in an increase in power flux density at the ground due to each channel.[30] STARSYS argues that this increase, in turn, could cause increased interference into STARSYS's gateway earth station operations. ORBCOMM replies that STARSYS has used incorrect parameters and assumptions

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the extent that we impose any of these additional proposals as operating requirements, we will address their application outside of the United States as the need arises.

[26] Report and Order in CC Docket No. 92-166, FCC 94-261, released October 14, 1994, at para. 213.

[27] We have carefully considered the proposals set forth in the Joint Sharing Agreement (JSA) in our decision-making process throughout this proceeding. While we are not bound by the terms of the JSA, it provided the basis upon which the Commission, the applicants, and other parties to the negotiated rulemaking developed technical sharing criteria for the allocated frequency bands. The JSA also obviated Commission concerns that the first round applications were mutually exclusive, and that adequate spectrum would not be available for future entry. In so embracing the JSA, we do not intend rigidly to enforce its specific technical provisions. We see no reason to prevent deviation from its terms to enhance system efficiency, when, as here, our action will not adversely impact either the plans of other first round applicants, or of future entrants.

[28] ORBCOMM originally proposed to place its satellites into orbit at approximately 960 kms. It now proposes to place its constellation into low-Earth orbit at 725 kms above the Earth.

[29] EIRP per channel has been increased by 1.8 dB.

[30] dbX concurs in this assessment.

in its calculations. Rather, ORBCOMM asserts that its system amendments will decrease the potential for intersystem interference in this band.

19. We agree with STARSYS that the higher satellite visibility due to the increased number of satellites, lower orbit altitude and increased EIRP per satellite channel collectively could increase potential intersystem interference due to each channel. ORBCOMM's amended system proposal, however, would reduce the number of downlink channels per satellite from nine channels to three. In addition, ORBCOMM's agreement to cease co-polarized operations when in view of the STARSYS gateway earth station mainbeam will further reduce the number of potentially interfering downlinks to two, cross-polarized channels. This channel reduction, even taking into account the increase in EIRP, will actually result in a significant net decrease in power flux density from the levels that would have resulted under ORBCOMM's original proposal.[31] This reduction in the total effective power received by the STARSYS gateway earth station from the ORBCOMM system will more than offset the effectsof higher satellite visibility and lower satellite orbit, and thereby reduce the potential interference into the STARSYS system. We thus find that these system modifications are acceptable.

20. *Uplink Frequency Band (148-149.9 MHz).* The Joint Sharing Agreement provides that ORBCOMM will operate throughout the upper portion of the 148 MHz - 149.9 MHz band, and STARSYS will operate its spread spectrum system in the lower portion of the band until one or the other of the systems has reached saturation levels for its allotted frequencies.[32] ORBCOMM seeks to operate throughout this entire band until the STARSYS system is operational, at which time it will confine its operations to the upper segment of the band. Operating across the full band, ORBCOMM alleges, will allow it to refine its operating techniques, particularly its DCAAS algorithms. STARSYS objects to this proposal, alleging that it not only violates the Joint Sharing Agreement, but will also cause substantial harm to STARSYS's ongoing experimental program in this portion of the band.[33] Specifically, STARSYS states that "Orbcomm's use of the band segment for operations during the ramp-up phase of its system would delay or forestall STARSYS's test program, skew test results, risk costly errors, and possibly result in system inefficiencies in the final design."[34]

21. ORBCOMM contends that its use of these bands will neither violate the Joint Sharing Agreement nor disrupt the STARSYS experimental program. ORBCOMM alleges that the total power of its program will constitute less than 0.00025% of the power that the STARSYS experimental satellite will receive in this band. ORBCOMM also states that it will provide details of its satellite orbit elements so that STARSYS will be able to factor out of its tests any anomalies that may be attributable to ORBCOMM's operations.

22. We will allow ORBCOMM to operate throughout the entire 148-149.9 MHz band until STARSYS is prepared to launch its first satellite. ORBCOMM's total uplink power will be substantially below the total power emitted by the terrestrial services in this band.[35] We do not believe that this very low level of interference will degrade STARSYS's experiments in this high-powered terrestrial environment. Moreover, allowing both parties to use these frequencies to refine and improve their system operations ultimately should lead to more efficient use of this scarce resource. In light of the potential benefits to future NVNG system users and existing terrestrial services, we thus will not needlessly restrict to one party the short-term use of this band, regardless of the applicants' original intent in their Joint Sharing Agreement. This decision, however, does not confer upon ORBCOMM any permanent right to operate throughout the entire band. ORBCOMM will be required to vacate the lower portions of the band upon written notice from STARSYS that launch of its first operational satellite will occur within 30 days.[36]

23. STARSYS further alleges that the ORBCOMM DCAAS system is not sufficiently accurate to allow the satellite system to meet the restrictions of U.S. footnote 323 to our domestic table of frequency allocations.[37] That footnote states, in relevant part, that no mobile earth terminal operating in the 148-149.9 MHz frequency band shall transmit on the same frequency being actively used by fixed and mobile stations. STARSYS argues that ORBCOMM cannot meet this prohibition because, by ORBCOMM's own initial calculations, its subscriber messages will be assigned to channels already in use by other systems approximately 5% of the time. Indeed, STARSYS claims that the likelihood of interference into terrestrial operations may be far higher than 5%, depending on the number of ORBCOMM satellites simultaneously in view and the actual distribution of system subscribers in relation to terrestrial users.

24. ORBCOMM argues that its channel assignment error rate will, in fact, be substantially lower than the 5% initially calculated. ORBCOMM's research of this issue is based on DCAAS simulations that were run using twelve months of actual radio frequency (RF) environmental data gathered in the course of its experimental program. The results of these simulations indicate that if ORBCOMM's DCAAS system had been in operation dur-

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[31] We calculate a net decrease in pfd of 4dB.

[32] dbX argues that this band segmentation approach appears to be an attempt by the two applicants to "claim" exclusively all of the available spectrum. This is not the case. STARSYS and ORBCOMM have merely negotiated a manner in which to coordinate their often incompatible systems. Nothing in our NVNG Order, or in today's license, grants to either party exclusive use of the frequency band. Later entrants will be given the opportunity to engineer systems that are compatible in this spectrum. Both ORBCOMM and STARSYS have assured us that their modulation schemes allow for some sharing with future, similarly designed systems. *See* Report of the Negotiated Rulemaking Committee, *supra* n.10.

[33] STARSYS's experimental license expired on August 1, 1994. It's request for renewal of that license is pending.

[34] *See* STARSYS's Opposition, *supra,* n.4, at p. 9.

[35] The total ORBCOMM uplink power is approximately 36 dB below the power of existing terrestrial services.

[36] Alternatively, ORBCOMM will be required to vacate the lower portions of the band upon written notification from the Commission, if circumstances compel the cessation of ORBCOMM's operation in these frequencies prior to notification by STARSYS.

[37] 47 C.F.R. Section 2.106, fn. US 323 (148-149.9 MHz band).

ing 1993, it would not have assigned a single transmission to a frequency already assigned to any terrestrial user. Accordingly, ORBCOMM asserts that its system meets the requirement that NVNG users avoid frequencies actively being used by fixed and mobile services.[38] We find that this analysis, based on actual RF environmental data, is compelling. Moreover, implementation of a "perfect" DCAAS system was not envisioned at the time that this footnote was adopted. Rather, this prohibition on the use of active channels, taken in conjunction with strict duty cycle and burst duration limitations on transmissions in this band,[39] collectively were intended to afford adequate protection to existing and future terrestrial users.[40]

25. These footnote restrictions were adopted specifically to protect existing government terrestrial users of this band.[41] In our service rules,[42] we further require applicants to coordinate their proposals with the Federal government users prior to the issuance of a license. Thus, it is particularly relevant to this issue that the Interdepartment Radio Advisory Committee (IRAC), which together with the National Telecommunications and Information Administration (NTIA) is responsible for coordinating government frequency analysis of the system proposals, has informed us that it does not object to the issuance of a license for the ORBCOMM space station system.[43] The existing U.S. spectrum users therefor believe that the ORBCOMM system can successfully avoid harmful interference into their operations. We conclude that the record contains substantial evidence to support this finding. Accordingly, we deny STARSYS's objection to ORBCOMM's DCAAS system.

C. Procedural Matters.

26. dbX alleges that ORBCOMM's amendments are "major" amendments, as defined by Section 25.116(b) of our Rules, and consequently, should be treated as a newly-filed application.[44] Such a finding would require us to dismiss the company's application for failure to meet the filing deadline for first round NVNG applications, unless the amendment falls within an exception established by Section 25.116(c) of our rules. Specifically, Section 25.116(b)(1) states in relevant part that an amendment will be deemed major if it increases the potential for interference, or changes the proposed frequencies or orbital locations to be used.[45] As discussed above, we have concluded, based on substantial record evidence, that the ORBCOMM amendments will not increase the potential for harmful interference to existing or planned systems. To the extent that the amendments propose minor frequency changes, these changes have been incorporated to resolve frequency conflicts with another applicant,[46] and are thereby acceptable under an exception to the dismissal rule found in Section 25.116(c)(1).[47] Further, any discussion of orbit locations is inapposite here, as LEO systems operate in orbital planes, and are not assigned to specific - and scarce - geostationary orbital slots. Thus, our regulations do not compel the dismissal of ORBCOMM's application for failure to meet the filing cut-off date.

D. Regulatory Treatment.

27. In our NVNG Report and Order, we found that these space station service offerings are not inherently common carrier in nature, within the definition established in the *NARUC I* decision.[48] In its original application, ORBCOMM stated its intent to offer its capacity on a common carrier basis. ORBCOMM, however, now proposes to sell bulk system capacity to resellers on an individually tailored basis. This proposal falls squarely within our discussion in the NVNG Report and Order,[49] and does not appear to be a common carriage offering of space segment capacity. Further, we found that sufficient competitive capacity exists, or will exist, to obviate any need to impose a legal compulsion to serve the public indifferently. Any perceived public need to impose common carriage requirements on space station licensees in this service has been further mitigated by the Commission's implementation of rules and policies pertaining to a newly-identified "commercial mobile radio service" (CMRS). The provision of NVNG service (including resale) directly to end users, to the extent that it meets the definition of CMRS, must be offered on a common carrier basis. Thus, impartial access to these new services to the public will be assured. *See* Implementation of Sections 3(n) and 332 of the Communications Act, GEN Docket No. 93-252, 9 FCC Rcd 1411, 1457-58 (1994). We retain the discretion, pursuant to Section 332(c)(5) of the Act, as we have exercised here, to determine whether the provision of MSS space segment capacity to CMRS providers

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[38] To the extent that the DCAAS system is imperfect, however, ORBCOMM believes that its performance can improve as the company gains operating experience throughout the band. Our decision to allow ORBCOMM temporarily to operate over the entire uplink band should assist this effort. *See* para. 22, *supra*.

[39] These duty cycle limits, for both FDMA and spread spectrum systems, are also set forth in US 323.

[40] *See, e.g.,* Report and Order in ET Docket No. 91-280, 8 FCC Rcd 1812 (1993) (Allocation Order), at para. 21.

[41] Allocation Order at paras. 16-18.n

[42] 47 C.F.R. Section 25.142(b)(2).

[43] *See* Letter to the Commission's liaison representative on the IRAC from the Chairman of IRAC, dated July 26, 1994. IRAC does request, however, that ORBCOMM verify, during its actual coordination with affected Federal agency users, the channel roll-off and out-of-band emission levels used in its amended application. We will condition ORBCOMM's license upon the verification of these, or other mutually agreeable levels. *See* para. 35, *infra*.

[44] STARSYS has raised similar concerns.

[45] The ORBCOMM amendments would not fall within other categories of major amendments that are listed in subsections 25.116(b)(2),(3) or (4).

[46] *See, e.g.,* para. 12, *supra*.

[47] Section 25.116(c)(1) states that an application need not be considered "newly filed" if its proposed amendment resolves frequency conflicts with other pending applicants, and does not create new or increased frequency conflicts.

[48] *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630 (D.C. Cir.) *cert. denied*, 425 U.S. 999 (1976).

[49] NVNG Order, 8 FCC Rcd at 8456-57, para. 24. In that Order, we found that the services proposed by the NVNG applicants are likely to be tailored to meet the needs of individual customers, and thus will not necessarily be offered as an indifferent holding-out to the public. For a more complete analysis of our determination that the bulk sale of NVNG space segment capacity is not common carrier in nature, *see* Notice of Proposed Rulemaking in CC Docket No. 92-76, 8 FCC Rcd 6330 (1993) at paras. 33-36.

will be regulated as private or common carriage. For the foregoing reasons, ORBCOMM will be allowed to offer all of its space segment capacity on a noncommon carriage basis.

E. Miscellaneous.

28. COMSAT claims that the United States must consult ORBCOMM's system with INTELSAT pursuant to Article XIV(d) of the INTELSAT Agreement, and notify INMARSAT under Article 8 of the INMARSAT Convention.[50] ORBCOMM disagrees with this analysis, arguing that it need not be subject to an economic harm analysis because the services it proposes to offer are not provided by INTELSAT. U.S. obligations under the INTELSAT Agreement and INMARSAT Convention require ORBCOMM to consult its system with each of those organizations. Article XIV(d) and Article I of the INTELSAT agreement apply to any fixed and mobile satellite services providing international public telecommunications services, not just those similar to services currently offered by INTELSAT. INMARSAT Article 8 likewise applies to all maritime mobile satellite services. ORBCOMM proposes in its application to offer both land and maritime mobile satellite services. Thus, although the financial impact of ORBCOMM's operations on either INTELSAT or INMARSAT may be *de minimis*, these operations must nonetheless be consulted.[51]

IV. CONCLUSION

29. We believe that grant of ORBCOMM's application, as amended, will serve the public interest. Implementation of this system will launch a new commercial service that will bring to U.S. consumers, and the world, innovative, affordable and portable satellite communications capabilities. ORBCOMM's recent system amendments will not interfere with the plans of existing or future NVNG applicants. To the contrary, these revisions have enhanced the company's original proposal. Since ORBCOMM's application was filed over 4 years ago, technology has advanced rapidly, and has made possible the use of smaller, lighter satellites. The company states that use of its upgraded satellite design will offer improved performance, efficiency gains and lower costs which will lead to better customer service at lower rates. Additionally, these smaller satellites, made possible by advances in miniaturization techniques, can be placed into orbit more rapidly, thereby speeding the availability of service to consumers. Grant of this system proposal, as amended, will allow the applicant to take advantage of these advancements, and enable ORBCOMM to pass along the cost and service benefits to the user public.

30. Accordingly, upon review of ORBCOMM's amended application to implement a system to provide NVNG MSS services and related pleadings, we find that ORBCOMM is legally, financially and technically qualified to be a Commission licensee. We further find, pursuant to Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. §309, that grant of this application will serve the public interest, convenience and necessity.

V. ORDERING CLAUSES

31. Accordingly, IT IS ORDERED that Application File No. 22-DSS-P-90(20) IS GRANTED and Orbital Communications Corporation IS AUTHORIZED to construct an NVNG mobile-satellite service system capable of operating in the 137-138 MHz and 148-149.9 MHz frequency bands, in accordance with the terms, conditions and technical specifications set forth in its application, as amended.

32. IT IS FURTHER ORDERED that Orbital Communications Corporation IS AUTHORIZED to launch and operate thirty-six low-Earth orbiting space stations, and to launch technically-identical replacement satellites during the license term, in the non-voice, non-geostationary mobile-satellite service in accordance with its application, and the relevant terms of any previous orders concerning the operation of space stations in this service.

33. IT IS FURTHER ORDERED that Orbital Communications Corporation IS AUTHORIZED to offer space segment capacity on its satellite system on a private carriage basis.

34. IT IS FURTHER ORDERED that, unless extended by the Commission for good cause shown, this authorization shall become null and void in the event that the space station is not constructed, launched and successfully placed into operation in accordance with the technical parameters and terms and conditions of the authorization by the following dates:

	Construction Commenced	Construction Completed	Launch
First two system satellites	N/A	May 1998	December 1998

[50] At the time ORBCOMM's application was filed, there were no service rules in place to govern the provision of NVNG MSS. COMSAT therefor alleged, without specificity, that ORBCOMM's proposed services were perhaps analogous to those of separate systems providers, and should be subject to existing separate systems policies and conditions. Since that time, we have adopted technical and service rules specific to the NVNG MSS. *See* NVNG Order, *supra*. COMSAT participated in this process as a member of the Negotiated Rulemaking Committee (*see* para. 3, *supra*.) Accordingly, it is now clear that our separate systems rules and policies are neither appropriate, nor applicable, to this service.

[51] Both international organizations have relaxed their requirements for economic consultation. In 1992, INTELSAT relaxed its procedures for economic harm assessment of separate satellite systems. No economic harm assessment will be required for separate systems providing services not interconnected to the public switched network (PSN); a presumption of no significant economic harm will be made for systems carrying no more than 1250 64 Kbts circuits per satellite connected with the PSN. The number of PSN circuits may be significantly increased in the future by INTELSAT. In 1993, INMARSAT made an *a priori* finding that no system falling within the scope of Article 8 that is notified during the period between the Seventh and Eighth Assembly of Parties (October 1993 to Autumn 1995) shall be deemed to cause significant economic harm to INMARSAT. For this period, other systems only must provide certain limited information to the Director General, who will inform the Council and Parties of the notification.

Remaining system satellites	December 1998	May 2000	December 2000

35. IT IS FURTHER ORDERED that, prior to launch of its satellites pursuant to this authority, Orbital Communications Corporation shall provide measured out-of-band emissions data and channel roll-off characteristics for system transmissions to the National Telecommunications and Information Administration for review.

36. IT IS FURTHER ORDERED that Orbital Communications Corporation shall cease any transmissions from the left-hand circular polarized (LHCP) downlink transmitters on its satellites that cause harmful interference to STARSYS when the ORBCOMM satellites come within a specified angular separation of the mainbeam of an antenna of a STARSYS Control and Data Acquisition (CDA) Earth station (as described in STARSYS's amended application) tracking a STARSYS satellite. The specific angular separation shall be determined by ORBCOMM and STARSYS, or by the Commission if the parties are unable to agree, based on the following parameters:

(1) the STARSYS inbound link values specified in Table A-2 of the STARSYS amended application;

(2) a maximum reduction of 0.7 dB in the STARSYS inbound link margin caused by a LHCP downlink from an ORBCOMM satellite;

(3) the measured power received by a STARSYS 16 dBi (or greater) CDA antenna from an ORBCOMM LHCP subscriber downlink under the geometric conditions as described in Table A-2 of the STARSYS amended application;

(4) the measured antenna pattern of the same STARSYS CDA antenna;

(5) LHCP channels used by ORBCOMM will be based on the revised ORBCOMM channelization plan for the 137 - 138 MHz band, as shown in Attachment 2 to its August 12, 1994 letter; and

(6) transmission characteristics of the ORBCOMM LHCP links will not exceed values stated in Tables 6 and A-1 of the December 28, 1993 amendment to ORBCOMM's application.

37. IT IS FURTHER ORDERED that the license term for the space station constellation is ten years and will commence on the date the licensee certifies to the Commission that the first satellite in the constellation has been successfully placed into orbit and that the first transmission to or from that satellite in the authorized frequency bands has occurred.

38. IT IS FURTHER ORDERED that Orbital Communications Corporation, as required by Section 25.202(c) of the Commission's rules, 47 C.F.R. §25.202(c), will prepare, within sixty days of the release of this order, the necessary submissions to the International Telecommunication Union (ITU) for advance publication, international coordination and notification of this satellite network in accordance with ITU Radio Regulations.

39. IT IS FURTHER ORDERED that this authorization is subject to the completion of consultations under Article XIV of the INTELSAT Agreement and Article 8 of the INMARSAT Convention. Upon completion of these consultations, and notification by the Department of State that the United States has fulfilled its international obligations with respect to INTELSAT and INMARSAT, no further action by this Commission will be required.

40. IT IS FURTHER ORDERED that the temporary assignment of any orbital planes, or of any particular frequencies, to Orbital Communications Corporation is subject to change by summary order of the Commission on 30 days' notice and does not confer any permanent right to use the orbit and spectrum. Neither this authorization nor any right granted by this authorization, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, or by transfer of control of any corporation holding this authorization, to any person except upon application to the Commission and upon a finding by the Commission that the public interest, convenience and necessity will be served thereby.

41. IT IS FURTHER ORDERED that the Petitions to Deny filed by LEOSAT Corporation and by STARSYS Global Positioning, Inc. ARE DENIED.

42. Orbital Communications Corporation may decline this authorization as conditioned within 30 days from the date of release of this order and authorization. Failure to decline this authorization within that period will constitute formal acceptance of the authorization as conditioned.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 83-1376

In the Matter of

Integration of Rates and Services
for the Provision of Communications
by Authorized Common Carriers
between the Contiguous States
and Alaska, Hawaii, Puerto Rico
and the Virgin Islands

FEDERAL COMMUNICATIONS COMMISSION

Kenneth P. Moran
Chief, Accounting and Audits Division

ORDER

Adopted: October 31, 1994; Released: October 31, 1994

By the Chief, Accounting and Audits Division:

1. On October 21, 1994, Alascom, Inc. ("Alascom") filed a Motion For an Extension of Time to respond to comments filed on its cost allocation plan in this proceeding.[1] Comments were filed October 10, 1994, and reply comments were due October 25, 1994. Alascom requests that the deadline for filing reply comments be extended two weeks until November 8, 1994.

2. Alascom states that its management has been unable to devote sufficient time to respond to the allegations raised by the commenters because its administrative resources were diverted to other matters relevant to this proceeding, including the recently announced agreement pursuant to which the American Telephone and Telegraph Companies (AT&T) would acquire Alascom. Alascom states that it has informed all parties to this proceeding of its intention to seek this extension. It asserts that no party has objected to the extension request.[2]

3. We do not routinely grant extensions of time.[3] We believe, however, that the public interest would be served by providing Alascom the additional time it requests. We also consider the fact that Alascom is the party who filed the cost allocation plan on which comment is sought. Alascom is reminded that it is expected to comply with deadlines set forth by the Commission and should not assume the grant of such motions in the future. We grant Alascom's motion and extend the filing date for reply comments until November 8, 1994.

4. Accordingly, IT IS ORDERED, that Alascom Inc.'s Motion for Extension of Time IS GRANTED.[4]

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[1] Alascom filed its cost allocation plan pursuant to Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands, 9 FCC Rcd 3023 (1994). The Commission solicited public comment on this cost allocation plan in a Public Notice released September 12, 1994, DA 94-979.

[2] Alascom states that it did not receive a response from the Alaska Telephone Association.

[3] 47 C.F.R. § 1.46(a).

[4] This action is taken pursuant to Sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 155(c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re

AllCity Paging, Inc. File No. 516MS0001

Notice of Apparent Liability

for Forfeiture for Stations
KNKJ371, KNKK524, KNKL244, KNKL961,
KNKO287, KNKO298, KNKO299, KNKP278,
and KNKP356 in the Public Land
Mobile Service at, collectively, various
locations in Arizona, California,
Michigan, Nevada, Ohio, and Utah

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 27, 1994; Released: October 28, 1994

By the Commission:

1. AllCity Paging, Inc. (AllCity) has informed the Commission that a system audit recently conducted by AllCity disclosed numerous instances in which modifications to its paging facilities were made without filing the required FCC Forms 489 and FCC Forms 401.[1] AllCity states that the required forms and appropriate paperwork have now been filed and acknowledges that Commission sanctions may be appropriate.[2] It requests expedited issuance of a notice of apparent liability because AllCity has entered into an agreement and plan of merger under which Metrocall, Inc. proposes to purchase control of AllCity. The closing, however, will not occur until the parties are able to quantify the magnitude of any forfeitures that may be imposed upon AllCity for failure to file the required FCC Forms 489 and 401.[3]

2. AllCity states in its letter that its audit identified 84 instances in which FCC Forms 489 were not filed, in violation of the Commission's Rules.[4] The incidents involved modifications to antenna heights and antenna systems or line losses (*i.e.*, changes to transmitting facilities between the transmitter and the antenna). AllCity further states that it identified 12 instances in which FCC Forms 401 were not filed. Six of these instances related to 931 MHz facilities and six concerned 72/75 MHz control facilities. These modifications involved changes in location, coordinates, service and/or interference contours, and antenna height. AllCity contends that all of the instances in which it failed to file Forms required by our rules involved minor changes to its facilities.

3. Section 301 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 301, provides in relevant part:

> No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio ... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Similarly, Section 22.3 of the Commission's Rules, 47 C.F.R. § 22.3, provides:

> No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

In addition, Section 22.9(b)(1) of the Commission's Rules, 47 C.F.R. § 22.9(b)(1), provides:

> *Notification of status of facilities.* (FCC Form 489). When construction has been completed in accordance with the radio station authorization, the licensee shall so notify the Commission using Form 489. Licensees can commence service the day Form 489 is placed in the mail to the FCC.

There is no dispute that AllCity failed to file the required FCC Forms 489 in each of the 84 instances noted above. Consequently, AllCity appears to have violated Section 22.9(b)(1) of the Commission's Rules. In addition, there is no dispute that AllCity failed to file the required FCC Forms 401 in the 12 instances noted above involving the 931 MHz facilities and the 72/75 MHz control facilities. We conclude, therefore, that AllCity also appears to have violated Section 301 of the Act and Section 22.3 of the Commission's Rules.

4. Section 503(b) of the Communications Act states, in pertinent part:

> Any person who is determined by the Commission, in accordance with paragraph (3) or (4) of this subsection, to have --
>
> (B) ... willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation or order issued by the Commission under this Act ... shall be liable to the United States for forfeiture penalty.

We find that AllCity's failure to file FCC Forms 489 in the 84 instances noted above and AllCity's failure to file FCC Forms 401 in the 12 instances noted above constitute willful and repeated conduct within the terms of the statute.[5]

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[1] *See* Letter to M. Peck, Deputy Chief, Mobile Services Division, from L. Gurman, counsel for AllCity (Sept. 12, 1994).
[2] *Id.*
[3] *Id.*
[4] *See* Section 22.9(b)(1) of the Commission's Rules, 47 C.F.R. § 22.9(b)(1).
[5] Section 312(f)(1) of the Communications Act provides:

5. Based upon our review of the nature and number of AllCity's violations, we reach the following conclusions. For each violation of Section 22.9(b)(1) involving a failure to file FCC Form 489, we find that a forfeiture of $2,000 per violation is warranted. For each violation of Section 301 of the Act and of Section 22.3 of the Commission's Rules, involving the failure to obtain Commission authorization, we find that a forfeiture of $3,500 per violation is warranted. Thus, the total forfeiture would be $210,000. In view of the facts, however, that AllCity voluntary disclosed the violations, fully cooperated with the staff during its investigation of these violations, and the infractions themselves were quite minor, we reduce the total forfeiture to $105,000.

6. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, AllCity Paging, Inc., IS APPARENTLY LIABLE FOR A FORFEITURE in the amount of one hundred five thousand dollars ($105,000) for willful and repeated violations of the aforementioned statutory and rule provisions. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2) of the Communications Act of 1934.

7. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the File Number of the above captioned proceeding.

8. A copy of this Notice is being sent to AllCity Paging, Inc., by Certified Mail. Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

The term "willful", when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States.

This definition applies to Section 503(b) of the Communications Act. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2) of the Communications Act provides:

The term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

This definition also applies to Section 503(b) of the Communications Act. *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 50-51 (1982).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Price Cap Treatment of Regulatory
Fees Imposed by Section 9 of the
Communications Act

ERRATUM

Released: November 2, 1994

By the Chief, Common Carrier Bureau:

On October 7, 1994, the Common Carrier Bureau, on its own motion, adopted an order issuing a waiver permitting price cap regulated common carriers to treat the cost associated with the regulatory fees paid pursuant to Section 9 of the Communications Act as an exogenous cost by making appropriate adjustments to their price cap indexes.[1] The Order provided that, as one implementing option, carriers wishing to take advantage of this waiver for the initial assessment of fees could file their tariffs to be effective on November 15, 1994, on not less than 45 days notice. This effective date did not allow enough time for the carriers to file tariffs with the requisite notice. To permit time for preparation of the tariff filings and the necessary notice period, the effective date for the tariffs should have read January 15, 1995.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

[1] Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Communications Act, DA 94-1119 (Com. Car. Bur., released Oct. 7, 1994).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Southwestern Bell Telephone Company Tariff F.C.C. No. 73 and Request for Partial Stay — Transmittal No. 2391

MEMORANDUM OPINION AND ORDER AND ORDER TO SHOW CAUSE

Adopted: November 2, 1994; Released: November 2, 1994

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On July 25, 1994, the Commission released its *Virtual Collocation Order*,[1] which established virtual collocation as the basic architecture for providing expanded interconnection and required Tier 1 local exchange carriers (LECs) (other than National Exchange Carrier Association pool members) to provide expanded interconnection for both interstate special access and switched transport through generally available virtual collocation services.[2] The Commission directed LECs to file virtual collocation tariffs on September 1, 1994. These tariffs were to include charges for interconnector-specified terminating equipment that the LECs would use to provide interconnection services to the requesting interconnectors. The Commission specified that these charges were to be based on the purchase prices of the terminating equipment.[3] The Commission required LECs to include in tariffs filed on September 1, 1994 specific rates for equipment requested by prospective users of virtual collocation service on or before August 1, 1994. LECs were required to amend their initial filings by October 3, 1994 to include specific rates for equipment identified by interconnectors after August 1, but no later than September 1.[4] Further, in a *TRP Order* released concurrently with the *Virtual Collocation Order*, the Common Carrier Bureau required LECs to file certain cost support data in conjunction with all of their rates for virtual collocation equipment.[5]

2. In the instant order, we dismiss a request by Southwestern Bell Telephone Company (SWBT) for partial stay of an Order issued by the Common Carrier Bureau's Tariff Division on October 4, 1994.[6] That Order declined to grant a waiver of the above-mentioned requirements of the *Virtual Collocation Order* and the *TRP Order*. In addition, we direct SWBT to show cause why it failed to include either specific rates for interconnector-specified equipment or cost support data in its October 6, 1994 virtual collocation tariff filing.

II. BACKGROUND

3. In the *Virtual Collocation Order*, the Commission established an equipment tariffing procedure that affords interconnectors the opportunity to designate their choice of central office transmission equipment, while at the same time minimizing burdens on the LECs.[7] As set forth above, the Commission specified dates by which interconnectors had to designate equipment to be included in the LECs' September 1 tariff filings, and had to designate additional equipment to be included in the October 3 filings amending the LECs' initial tariffs.[8] The Commission also stated that in order to facilitate an orderly tariffing process, LECs would be permitted to treat interconnector requests submitted between September 1 and December 15 as if they were received on the day after the tariffs became effective.[9] The Commission further stated that after the initial tariffs become effective, interconnectors will continue to have the right to specify additional types of equipment to be included in LEC virtual collocation tariffs.[10] With respect to equipment pricing, the Commission required LECs to set their rates based on the direct costs of providing expanded interconnection service plus a reasonable allocation of overhead costs.[11] The Commission instructed LECs to base the direct costs of providing terminating equipment to serve an interconnector on the lowest purchase price reasonably available to them. The Commission stated that in applying this standard, it would find probative the price at which an interconnector may offer to sell the desired equipment to the LEC. According to the Commission, any costs incurred above the lowest reasonably available price are not prudently incurred, and should not be reflected in the LECs' rates.[12]

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[1] Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rad 5154 (1994), *appeal docketed sub nom.*, Southwestern Bell Telephone Company v. FCC, Case No. 94-1547 (D.C. Cir. Aug. 10, 1994) (*Virtual Collocation Order*).

[2] Expanded interconnection is a LEC offering that enables parties, by interconnecting their circuits with those of the LEC at a LEC central office, to compete on a facilities basis with certain LEC access services. Expanded interconnection through virtual collocation is an offering in which the LEC owns (or may lease) and exercises exclusive physical control over the transmission equipment, located in the central office, that terminates the interconnector's circuits. The interconnector has the right to designate its choice of central office equipment, and the LEC dedicates this equipment to the exclusive use of the interconnector. *See Virtual Collocation Order* at ¶ 7.

[3] *See id.* at ¶ ¶ 36, 44, 124.

[4] *Id.* at ¶ 51.

[5] Commission Requirements for Cost Support Material To be Filed with Virtual Collocation Tariffs for Special Access and Switched Transport, Tariff Review Plan Order, 9 FCC Rad 5679 (Com. Car. Bur. 1994) (*TRP Order*).

[6] In the Matter of Southwestern Bell Telephone Company Contingent Motion for Extension of Time, Memorandum Opinion and Order, DA 94-1095 (T.D., released Oct. 4, 1994) (*October 4 Order*).

[7] *See Virtual Collocation Order* at ¶ 44.

[8] *See id* at ¶ 51.

[9] *Id.*

[10] *Id.* at ¶ 52. The Commission specified that LECs will be required to modify their tariffs to offer these additional types of equipment within 30 days of receiving a request. The Commission stated that such tariff changes should be scheduled to become effective on 30 days notice. *Id.*

[11] *Id.* at ¶ 121.

[12] *Id.* at ¶ 124. The Commission also stated that it did not

Thus, the *Virtual Collocation Order* established a series of steps to be taken through the tariff process that would permit LECs and interconnectors to arrive jointly at the lowest reasonably available equipment prices that would serve as the basis for virtual collocation rates.[13]

4. Pursuant to the *Virtual Collocation Order*, SWBT filed on September 1, 1994, interim[14] and permanent[15] tariffs that established rate elements and some associated rates for equipment that interconnectors had requested on or before August 1.[16] Prior to the Commission's October 3 deadline for LECs to amend their tariffs in response to interconnector requests for additional equipment, SWBT filed a "contingent" motion for extension of time.[17] SWBT argued that the vagueness of an August 31 equipment request from MCI Telecommunications Corporation (MCI) and MCI's refusal to clarify its request rendered SWBT unable to complete the establishment of rate elements or preparation of cost support until December 1, 1994, or within 60 days of receiving the necessary prices from its equipment vendors, whichever is later.[18] SWBT also asserted that it had satisfied the criteria for a waiver of the requirements of the Commission's and the Bureau's Orders.[19] On September 29, MCI filed an opposition to SWBT's motion, asserting, *inter alia*, that SWBT had not justified grant of a waiver. According to MCI, no other LEC had informed MCI that its equipment list was too general. MCI avers that SWBT was unable to file rates or cost support by the October 3 deadline because it did not submit MCI's equipment list to vendors until September 16, 1994.[20]

5. On October 4, 1994, the Tariff Division (Division) issued an Order (*October 4 Order*) denying SWBT's pleading. The Division concluded, *inter alia*, that SWBT had not demonstrated that special circumstances warrant a deviation from the requirements of the *Virtual Collocation Order* and *TRP Order*. Moreover, the Division found that given the absence of special circumstances, it is in the public interest for SWBT to file its tariff revisions in a timely manner. The Division emphasized that any unnecessary delay in filing tariff revisions to reflect an interconnector's equipment request undermines a cornerstone of the Commission's mandatory virtual collocation regime: that an interconnector may reasonably specify the central office basic transmission equipment to be dedicated to its use.[21] On October 6, 1994, SWBT filed Transmittal No. 2391 in response to the *October 4 Order*. That tariff filing lists equipment rate elements, but does not provide specific equipment rates or cost support.

III. SWBT'S REQUEST FOR PARTIAL STAY

6. On October 12, 1994, SWBT filed a request for partial stay of the *October 4 Order* pending SWBT's receipt of the necessary pricing information from its vendor.[22] SWBT states that at that time, it will inform the Commission how long it will take for SWBT to process the cost information and develop the appropriate rates.[23] In the alternative, SWBT asserts that its stay request should be treated as a supplement to the record because it did not have the opportunity to file a reply to MCI's opposition to its contingent motion.[24]

7. SWBT claims that contrary to MCI's opposition to its contingent motion, it did not delay processing MCI's request. Rather, SWBT asserts that MCI's equipment list was so lacking in configuration information that SWBT could not proceed with obtaining vendor pricing.[25] Specifically, SWBT argues that MCI's August 31 list contains a long list of vendors and product lines, but does not specify "architecture arrangements or equipment configurations."[26] SWBT disputes MCI's assertion that

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intend to limit the LECs' ability to use financial arrangements other than purchasing equipment outright from third parties. The Commission concluded that LECs may, if they wish, offer to purchase virtual collocation equipment from interconnectors for a nominal amount and make it available for resale to the interconnectors for the same amount. The Commission, however, declined to require LECs to offer such an arrangement. *Id.* at ¶ 127.

[13] The Commission noted that its requirements would address, *inter alia*, the LECs' lack of incentive to obtain the lowest possible prices for equipment. *Id.* at ¶ 124.

[14] *See* Southwestern Bell Tariff F.C.C. No. 73, Transmittal No. 2382, dated September 1, 1994 (as amended by Transmittal No. 2387, dated September 27, 1994). SWBT's interim tariff became effective on September 4, 1994, subject to a one-day suspension, an accounting order, and an investigation. *See* Ameritech Operating Companies *et al.*, Order, CC Docket No. 94-97, 9 FCC Rad 5230 (Com. Car. Bur. 1994).

[15] *See* Southwestern Bell Tariff F.C.C. No. 73, Transmittal No. 2383, dated September 1, 1994 (as amended by Transmittal No. 2388, dated September 27, 1994). SWBT's permanent tariff is scheduled to become effective on December 15, 1994.

[16] SWBT has requested that the "negotiated" equipment prices and overhead costs associated with its interim and permanent tariff offerings be accorded confidential treatment under the Freedom of Information Act. We note that other LECs based their virtual collocation equipment rates on "list" prices or nonproprietary data. *See, e.g.*, U S West Communications, Inc., Tariff F.C.C. No. 5, Transmittal No. 530 & 531, dated September 1, 1994 (as amended by Transmittal Nos. 538 & 539, dated September 19, 1994); Cincinnati Bell Telephone Company, Tariff F.C.C. No. 35, Transmittal No. 662, dated September 1, 1994.

[17] SWBT stated that its motion was contingent upon the Commission's determination that MCI's equipment request was reasonable. SWBT Motion at 1.

[18] *Id.* at 2-5. SWBT asserted that when it asked its vendors for pricing based on its own assumptions as to the configurations that might be used by MCI, the vendors responded that due to the large number of configurations involved, they would not be able to provide pricing until after the October 3 deadline. Further, SWBT maintained that after it receives equipment supplier price quotes, it needs several hours of engineering review and preparation time for each equipment configuration. *Id.* at 4-5.

[19] *Id.* at 6.

[20] MCI Opposition to SWBT Motion at 2-4.

[21] *October 4 Order* at ¶ 7 (*citing Virtual Collocation Order* at ¶ 44).

[22] SWBT asserts that it seeks a "partial" stay because its October 6 tariff filing listed equipment rate elements. SWBT acknowledges, however, that the filing lacks fixed rates or cost support for these elements. SWBT Stay Request at 1 n.2.

[23] *Id.* at 1-2.

[24] *Id.* at 1 n.2.

[25] *Id.* at 3-4. Further, SWBT argues that contrary to the *October 4 Order*, SWBT did not receive a request from MCI prior to MCI's August 31 request. *See id.* at 10-11.

[26] *Id.* at 9-10. According to SWBT, each vendor has a multitude of equipment-specific options that can be used in provisioning the various architecture arrangement or equipment

SWBT is the only carrier that informed MCI that its equipment request was too general. According to SWBT, it appears that US West and Cincinnati Bell, the other LECs that filed individual tariffed rates for equipment, received different equipment requests from MCI.[27]

8. SWBT contends that when MCI did not respond to SWBT's requests for configuration data, SWBT sought equipment prices on September 16, 1994, based on its own assumptions using a "basic general configuration."[28] SWBT argues that on September 29, 1994, the date MCI filed its opposition, MCI submitted a revised equipment list that included the configuration data SWBT had requested.[29] SWBT further asserts that although it asked its vendor for prices based on this new data, the vendor declined to provide information for fear that public disclosure of the price information may compromise its competitive position in the marketplace.[30] SWBT submits that because its vendor to date has not provided the requested pricing information, its October 6 filing is the most complete filing it could make in response to the *October 4 Order*.[31] On October 19, 1994, MCI filed an opposition to SWBT's request for partial stay, primarily asserting that the request should be dismissed because it is procedurally deficient.[32]

IV. DISCUSSION

A. SWBT's Request for Partial Stay

9. In determining whether SWBT has justified its request for partial stay of the *October 4 Order*, we apply the standard articulated by the Court of Appeals for the District of Columbia Circuit in *Virginia Petroleum Jobbers*.[33] That test requires the petitioner to demonstrate that: (1) the petitioner has a substantial prospect of prevailing on the merits of its appeal; (2) the petitioner will suffer irreparable injury in the absence of a stay; (3) the issuance of a stay would not substantially harm other parties interested in the proceeding; and (4) issuing a stay will not disserve the public interest.[34]

10. As a threshold matter, SWBT has not even attempted to demonstrate that its request satisfies the legal requirements for a stay. For example, SWBT has not alleged that it will suffer irreparable injury absent grant of a stay, or that grant of a stay will not substantially harm other interested parties. Accordingly, we dismiss SWBT's request for partial stay of the *October 4 Order* on the grounds that SWBT has failed to address the relevant legal requirements.

11. We will, however, treat SWBT's October 12 submission as a supplement to the record in this proceeding. Despite the supplemental information SWBT has provided concerning the events surrounding MCI's equipment requests, we are not persuaded that SWBT is entitled to a waiver of the tariff filing requirements of the Commission's *Virtual Collocation Order* and the Bureau's *TRP Order*. As the Tariff Division stated in its *October 4 Order*, the test for whether SWBT may be granted a waiver is whether it has shown some unique or special circumstances, such as hardship or inequity, that warrant deviation from the Commission's virtual collocation rules and whether such deviation better serves the public interest.[35] Based on our review of SWBT's October 12 submission, we conclude that SWBT has not demonstrated that special circumstances warrant a deviation from the Commission's tariff filing requirements.

12. Although SWBT again recounts its difficulty in obtaining configuration data from MCI, we do not find SWBT's explanation sufficient to justify its failure to file rates and cost support by the October 3 tariffing deadline. As an initial matter, SWBT's reliance on the *Virtual Collocation Order* as authority for its assertion that interconnectors must provide "architecture arrangements or equipment configurations" is misplaced. The *Virtual Collocation Order* states only that an interconnector's right to select the type of equipment dedicated to its use is "critical to enable interconnectors to determine the configuration of their circuits that terminate in such equipment."[36] Further, while SWBT contends that certain configuration data were needed to obtain pricing information from the vendors, it does not provide any evidence that the vendors themselves required this particular configuration information.

13. Moreover, SWBT's additional information has failed to persuade us that deviation from our filing deadline will better serve the public interest than adherence to the Commission's tariff filing requirements. Even though SWBT has chosen to respond to the *Virtual Collocation Order* by basing its rates on "negotiated" equipment prices, we are unconvinced that SWBT had no choice but to file a tariff lacking equipment rates and cost support data[37] – particularly in light of the strong public interest in having SWBT file revisions in a timely manner so that its virtual collocation tariffs can be reviewed and implemented expeditiously. In sum, SWBT's additional information still does not demonstrate that special circumstances warrant deviation from the Commission's rules, given the strong public interest concerns involved.[38] We therefore affirm the Tariff Division's denial of SWBT's request for a waiver.

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configurations "as per the *Virtual Collocation Order* which requires the interconnector to provide configuration information." *Id.* at 10.

[27] *Id.* at 8-9. SWBT also maintains that these other carriers are not "similarly situated" to SWBT. For example, SWBT asserts that US West apparently complies with the Commission's mandates by using "list" prices. *Id.*

[28] *Id.* at 3-5.

[29] *Id.* at 6-8.

[30] *Id.* at 8.

[31] *Id.* at 10.

[32] *See generally* MCI Opposition to SWBT Stay Request.

[33] Virginia Petroleum Jobbers Ass'n v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958) (*Virginia Petroleum Jobbers*).

[34] *See Virginia Petroleum Jobbers*, 259 F.2d at 925; *see also* Washington Metropolitan Area v. Holiday Tours, 559 F.2d 841 (D.C. Cir. 1977) (holding that a balancing of the equities should be used in considering whether applicants meet stay standards articulated in *Virginia Petroleum Jobbers*, particularly where the public welfare would be affected).

[35] *See October 4 Order* at ¶ 5.

[36] *See Virtual Collocation Order* at ¶ 49.

[37] *See* footnote 16, *supra*.

[38] *See* WAIT Radio v. FCC, 418 F.2d 1135, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

B. Order to Show Cause

14. SWBT was required by two orders – the Commission's *Virtual Collocation Order* and the Bureau's *TRP Order* – to amend by October 3, 1994, its virtual collocation tariff to include rates and cost support for additional interconnector-specified equipment. Nevertheless, SWBT's October 6 tariff filing includes neither specific equipment rates nor associated cost support. Accordingly, SWBT is hereby directed to show cause why it failed to comply with the foregoing Orders by filing rates and cost support data for virtual collocation equipment based on either: (a) proprietary data; or (b) nonproprietary data. SWBT must file its answer to our Order to Show Cause no later than seven days from the release of this Order.

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that Southwestern Bell Telephone Company's Request for Partial Stay IS DISMISSED.

16. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 4(j), 205, 213, 218, 220, and 403 of the Communications Act, 47 U.S. C. §§ 154(i), 154 (j), 205, 213, 218, 220, 403, and Section 1.701 of the Commission's Rules, 47 C.F.R. § 1.701, that Southwestern Bell Telephone Company is directed to SHOW CAUSE within seven days of release of this Order why it failed to comply with the Commission's and the Bureau's orders, as set forth above.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications
Tariff F.C.C. Nos. 9 and 11

Transmittal Nos. 7629 and 7630

ORDER

Adopted: October 31, 1994; Released: October 31, 1994

By the Acting Chief, Tariff Division, Common Carrier Bureau:

1. On October 18, 1994, AT&T Communications (AT&T) filed the captioned tariff revisions on 14 days' notice. By these filings, AT&T proposes to increase the rates for its analog private line services. The transmittals are currently scheduled to take effect on November 1, 1994.

2. On October 24, 1994, Aeronautical Radio, Inc. filed a petition to reject, or suspend and investigate. Transmittal Nos. 7629 and 7630. AT&T filed a reply on October 27, 1994.

3. The Common Carrier Bureau has reviewed AT&T Communications Transmittal Nos. 7629, 7630 and the related pleadings. We conclude that the filings do not warrant rejection because they do not, on their face, conflict with a statute or with an agency regulation or order. We further conclude that the petition does not demonstrate that an investigation is warranted at this time.

4. Accordingly, IT IS ORDERED that the petition to reject or suspend and investigate AT&T Communications Tariff F.C.C. Nos. 9 and 11, Transmittal Nos. 7629 and 7630, filed by Aeronautical Radio, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Geraldine A. Matise
Acting Chief, Tariff Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Southwestern Bell Telephone Company
Tariff F.C.C. No. 73

Transmittal Nos. 2382, 2383

PROTECTIVE ORDER

Adopted: November 1, 1994; Released: November 1, 1994

By the Chief, Common Carrier Bureau:

1. This Protective Order implements the Common Carrier Bureau's (Bureau's) Novemebr 1, 1994 letter ruling regarding disclosure of the cost support data filed by Southwestern Bell Telephone Company (SWBT) in connection with its virtual collocation service. *Letter from Kathleen M. H. Wallman to Jonathan E. Canis, et al., FOIA Control Nos. 94-310, 324 and 328, DA 94-1214 (November 1, 1994).* In that ruling, the Bureau conditionally granted several Freedom of Information Act (FOIA) requests seeking access to itemized equipment and overhead costs included in SWBT's virtual collocation tariff review plan. While denying the requests for public release under the FOIA, the Bureau ruled that the cost support data must be disclosed to all parties to the virtual collocation tariff review proceeding for the sole purpose of permitting participation in that proceeding. The limitations on disclosure incorporated herein are intended to protect the competitive interests of vendors whose privately negotiated equipment prices are reflected in SWBT's virtual collocation cost support data (equipment vendors).

2. Accordingly, copies of SWBT's virtual collocation cost support data shall be disclosed to all parties to this proceeding provided that such parties have provided to the Bureau a sworn affidavit affirmatively stating that they have personally reviewed this Protective Order, understand the limitations it imposes, and agree to abide by the terms set forth herein.

3. Persons obtaining copies of SWBT's virtual collocation cost support data pursuant to paragraph 2 may not duplicate or disclose any aspect of the cost support data except to the following persons:

(a) attorneys, including in-house counsel, actively engaged in the conduct of the virtual collocation tariff review proceeding; to the partners, associates, secretaries, paralegal assistants, and employees of such an attorney to the extent reasonably necessary to assist in review of SWBT's virtual collocation tariff and preparation of pleadings in the proceeding;

(b) any person requested by counsel of record to furnish technical or other expert services, or otherwise to prepare material for the virtual collocation tariff review proceeding, except that disclosure to personnel in a position to use the information for competitive commercial or business purposes shall be limited to the minimum extent disclosure to such personnel is necessary to obtain analysis and management guidelines for participation in the virtual collocation tariff proceeding and;

(c) in the event the Commission orders that depositions may be taken, persons noticed for depositions or designated as witnesses to the extent reasonably necessary in preparing to testify to outside consultants or experts retained for the purpose of assisting counsel in the proceeding.

(d) Before disclosing SWBT's virtual collocation cost support data to any person listed in subparts (b) and (c) of this paragraph, the individual to whom disclosure is to be made must sign a form containing:

(1) a recital that the signatory has read and understands this Protective Order and

(2) a recital that the signatory understands that unauthorized disclosures of SWBT's cost support data are prohibited.

(e) Before disclosing SWBT's virtual collocation cost support data to any person listed in subparts (b) and (c) of this paragraph who is a competitor (or an employee of a competitor) of the equipment vendors whose prices are contained therein, the party wishing to make such disclosure shall give at least ten days' advance notice in writing to counsel for any equipment vendor whose data are to be disclosed, stating the name and address of the person[s] to whom disclosure is to be made and stating the purpose of such disclosure. If, within the ten-day period, a motion is filed objecting to the proposed disclosure, a disclosure is not permissible until the Commission has denied such motion.

4. As obtained pursuant to this Order, SWBT's virtual collocation cost support data shall be used exclusively for purposes of participating in the virtual collocation tariff review proceeding, including any appeals, and shall not be used or disclosed for any other purpose. The limitation on the use or disclosure of SWBT's virtual collocation cost support data shall be construed to prohibit disclosure of all information contained therein and to prohibit making decisions, participating in any decisionmaking process or rendering advice, legal or otherwise, wherein any information or knowledge derived from said cost support data is utilized in any manner other than for purposes of this proceeding.

5. Persons obtaining access to SWBT's virtual collocation cost support data under the terms of paragraphs 2 or 3 of this order may disclose, describe, or discuss the information contained therein in any pleading filed in the virtual collocation tariff review proceeding, but only if the following procedures are observed:

(a) Any pleading that includes specific information contained in SWBT's virtual collocation cost support data shall be filed under seal and clearly

marked "Contains Confidential Information Subject to Protective Order, DA 94-1215" and covered by a separate letter referencing this Order.

(b) Any pleading that includes specific information contained in SWBT's virtual collocation cost support data shall be served only upon the Commission, SWBT, and any vendor whose equipment prices are included in SWBT's virtual collocation cost support data and reflected in the pleading.

(c) Any party filing a pleading in accordance with subpart (a) of this paragraph shall also file with the Commission a separate public version in which all specific information that is contained in SWBT's virtual collocation cost support data has been redacted. Any such public version shall be:

(i) hand delivered to SWBT and any vendors whose equipment prices are included in SWBT's virtual collocation cost support data and reflected in the unredacted version of the pleading on the same date that the confidential version is filed with the Commission under subpart (a) of this paragraph;

(ii) filed with the Commission for inclusion in the public record five working days following submission of the confidential pleading under subpart (a) of this paragraph; and

(iii) served on all parties to the virtual collocation tariff review proceeding on the same date that it is filed with the Commission under subpart (c)(ii) of this paragraph, unless a vendor whose confidential prices are contained in SWBT's virtual collocation cost support data objects in writing to such service.

6. Disclosure of SWBT's virtual collocation cost support data under this Protective Order shall not be deemed a waiver by either SWBT or the vendors whose data are contained therein, in any other proceeding, agency, or court, of any privilege or entitlement to confidential treatment. Any parties receiving access to SWBT's virtual collocation cost support data under this Order:

(a) agree not to assert any such waiver;

(b) agree not to use information derived from SWBT's virtual collocation cost support data in any proceeding or for any purpose other than the virtual collocation tariff review proceeding; and

(c) agree that accidental disclosure of privileged information shall not be deemed a waiver of the privilege.

7. In the event that SWBT's virtual collocation cost support data is released or otherwise becomes publicly available other than as a result of a violation of this Order or other unlawful means, the nondisclosure provisions of this Order shall cease with respect to the information released or made publicly available but shall remain in full force and effect as to the information not so released or made publicly available.

8. No copies of SWBT's virtual collocation tariff review plan shall be made except copies to be used by persons designated in paragraph 2 or 3 of this Protective Order. Each party receiving access under this Protective Order shall maintain a log recording the number of copies made and the persons to whom the copies have been provided.

9. Upon termination of the virtual collocation tariff review proceeding, including all administrative and judicial appeals, all originals and reproductions of SWBT's virtual collocation cost support data, along with the log recording persons who have received copies of such materials, shall be provided to SWBT or shall be destroyed pursuant to written permission from SWBT and the equipment vendors whose data are contained in the cost support data. In addition, upon final termination of the virtual collocation tariff review proceeding, any notes or other work product derived in whole or in part from SWBT's virtual collocation cost support data shall be destroyed.

10. This Protective Order shall govern disclosure of equipment and overhead costs contained in any future tariff revisions that may be filed in confidence by SWBT to modify the above-captioned transmittals.

11. This Protective Order is issued pursuant to Sections 4(1) and §203(b)(2) of the Communication Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 203(b)(2), and authority delegated under Section 0.291 of the Commission's rules, 47 C.F.R. 0.291, and shall take effect following exhaustion of SWBT's and the equipment vendors' FOIA appeal rights under 47 C.F.R. §§ 0.461(h)(2), (4).

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M. H. Wallman
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
November 1, 1994

Released: November 1, 1994

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Frank W. Krogh
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Richard J. Metzger
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Re: Freedom of Information Act Requests Control Nos. 94-310, 325, 328

Gentlemen:

This is in response to your recent Freedom of Information Act (FOIA) requests, filed on behalf of MFS Communications (MFS), MCI Telecommunications Corporation (MCI), and the Association for Local Telecommunications Services (ALTS).[1] These requests seek access to cost support data filed by Southwestern Bell Telephone Company (SWBT) in connection with its virtual collocation tariff. The data consist of itemized equipment and overhead costs which SWBT asserts merit confidential treatment under Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4), and the Commission's parallel regulations governing treatment of private business information, 47 C.F.R. §§ 0.457(d), 0.459. Equipment vendors whose prices are contained in SWBT's submission also support confidential treatment.[2] MFS, MCI, and ALTS, on the other hand, contend that the cost support data must be disclosed to permit interested parties to judge the lawfulness of SWBT's rates for its virtual collocation service.[3]

For the reasons set forth below, we deny the requests for inspection filed by MFS, MCI, and ALTS, to the extent they seek unrestricted disclosure under the FOIA, 5 U.S.C. § 552. In so doing, we conclude that equipment costs contained in SWBT's submission are protected from mandatory disclosure by Exemption 4, and that the equipment vendors' legitimate interests in protecting this competitively sensitive information outweighs the public interest in completely unrestricted access to cost support data for tariff filings. Nonetheless, there is a compelling public interest in providing affected parties the maximum opportunity to assess the lawfulness of a common carrier's rates. Accordingly, we conditionally grant the FOIA requests to permit disclosure under the terms of the attached protective order. Thus, MFS, MCI, ALTS, and any other parties to the virtual collocation tariff review proceeding will be granted access to SWBT's cost support data solely for the limited purpose of participating in the tariff review proceeding. We explain below the standards guiding this decision.

Exemption 4 of the FOIA permits withholding of "commercial or financial information obtained from a person and privileged or confidential." Commercial or financial information that is required to be filed with a federal agency is considered confidential under Exemption 4 if disclosure of such information would be likely to (1) impair the government's ability to obtain necessary information in the future, (2) cause substantial competitive harm, or (3) result in harm to the effectiveness of agency programs. *National Parks and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); *Critical Mass Energy Project v. NRC*, 830 F.2d 278 (D.C. Cir. 1987). Although outside parties may provide evidence of likely impairment to the government's information-gathering abilities or program effectiveness, the judgment as to whether such possibilities are sufficient to justify nondisclosure belongs uniquely to the government. *See General Electric Co. v. NRC*, 750 F.2d 1394, 1402 (7th Cir. 1984).

Parties alleging competitive sensitivity as a basis for withholding business data filed with the Commission must demonstrate the likelihood of substantial competitive harm "by a preponderance of the evidence." 47 C.F.R. § 0.459(d). While "conclusory and generalized allegations" cannot support nondisclosure, neither is an elaborate economic analysis necessary to establish the likelihood of substantial competitive injury. *National Parks and Conservation Association v. Kleppe*, 547 F.2d 673, 680-81 (D.C. Cir. 1976).

An agency's finding that substantial competitive harm is probable does not automatically lead to a finding against release of desired information since FOIA exemptions are not mandatory bars to disclosure. Even when particular information falls within the scope of a FOIA exemption, the government is afforded discretion to order release

[1] MFS's request was received by the FOIA Control Office on September 15, 1994, MCI's on September 30, 1994, and ALTS's on October 3, 1994. MFS, through counsel, has granted the Bureau a five-working-day extension of time to respond to its request.

[2] The following vendors have filed letters urging the Commission to withhold their equipment prices: Fujitsu Network Transmission Systems, Inc.; AT&T Network Systems; Northern Telecom Inc.; and Tellabs Operations, Inc.

[3] This view is also echoed by Teleport Communications Group Inc. (TCG) in its opposition to SWBT's confidentiality request. Although TCG claims that SWBT has failed to demonstrate that its submission falls within the scope of Exemption 4 of the FOIA, TCG has neither filed a FOIA request in accordance with Section 0.461 of the Commission's rules, 47 C.F.R. § 0.461, nor invoked the FOIA as a basis for obtaining access to SWBT's cost support materials. Therefore, we do not respond to TCG's pleading in this letter. Nonetheless, our ruling herein effectively determines the availability of SWBT's virtual collocation cost support data to all parties, including TCG.

based on public interest grounds. *Chrysler v. Brown*, 441 U.S. 281, 290-94 (1979) (*Chrysler*). However, when information may be withheld under Exemption 4, an agency's decision to release such data must be "authorized by law." *Id.* Commission rules permitting disclosure of Exemption 4 materials upon a "persuasive showing" constitute the requisite authorization required by *Chrysler*. 47 C.F.R § 0.457(d)(1), (2)(i). *See, Northern Television v. FCC*, No. 79-3468, 1 GDS ¶80 ,124 (D.D.C. 1980). In determining whether a public interest in disclosure is sufficiently compelling to outweigh a legitimate interest in the privacy of proprietary business data, the Commission has adhered to a policy whereby it

> . . . will not authorize the disclosure of confidential financial information on the mere chance that it might be helpful, but insists upon a showing that the information is a necessary link in a chain of evidence that will resolve a public interest issue. *Classical Radio for Connecticut, Inc.*, 69 FCC 2d 1517, 1520 n.4 (1978).

Moreover, even when information is critical to resolution of a public interest issue, the competitive threat posed by widespread disclosure under the FOIA[4] may outweigh the public benefit in disclosure. *See, e.g., Commission Requirements for Cost Support Materials to be Filed with Open Network Architecture Access Tariffs*, 7 FCC Rcd 1526, 1533 (Com. Car. Bur. 1992) (*SCIS Disclosure Order*). In such instances, disclosure under a protective order may serve the dual purpose of protecting competitively valuable information while still permitting limited disclosure for a specific public purpose.

SWBT asserts that disclosure of its cost support data would impair the Commission's ability to obtain necessary information in the future and, also, substantially damage both its own competitive position and those of the equipment vendors whose prices are contained in its submission. SWBT contends that cost support data filed by other LECs is neither as extensive or detailed as its own.[5] SWBT predicts that the Commission will be unable to obtain accurate equipment prices if vendors are not assured that their individually negotiated prices will be withheld. In addition, both SWBT and its equipment suppliers claim that the suppliers will suffer substantial competitive harm if such detailed price information is disclosed. On its own behalf, SWBT contends that it faces increasing competition from companies like MFS who could use knowledge of the company's overhead costs to devise their own business plans and marketing strategies to inflict substantial competitive harm. Finally, SWBT suggests that both equipment and overhead costs must be withheld even if the Bureau determines that only one cost element is confidential under Exemption 4, since one set of figures could be used to calculate the other.

In contrast, MFS, MCI, and ALTS contend that neither equipment nor overhead costs should be withheld. They question the applicability of Exemption 4 and emphasize that other LECs whose cost support data include equipment and overhead costs have not sought confidential treatment for such information. Primarily, however, MFS, MCI, and ALTS all assert that SWBT will thwart the Commission's tariff review process if its virtual collocation cost support data are withheld from interested parties. In this regard, the FOIA requesters stress the Commission's longstanding practice of conducting open tariff proceedings. MFS suggests that an open tariff review process could be maintained and SWBT could avoid disclosing equipment costs if it followed other LECs by adopting a rate structure based on "$1 sale/buyback" arrangements.

After reviewing the materials at issue in the instant case and the competing claims of SWBT and its equipment suppliers and the FOIA requesters, we conclude that unrestricted release under the FOIA would threaten both the equipment vendors' legitimate interests in protecting proprietary pricing data and the Commission's interests in ensuring continued access to vendor's pricing data and promoting the effectiveness of the expanded interconnection regime. The fact that other LECs have not requested confidential treatment for their virtual collocation cost support data does not vitiate these interests, especially since SWBT's cost support submission presents a level of detail far beyond the other LECs' submissions. In addition, SWBT's ability to restructure its tariff to avoid the need to rely on confidential cost support data is irrelevant to the issues of whether those data must or should be disclosed under the FOIA.

The record in this case clearly indicates that equipment suppliers generally do not disclose the prices for their equipment outside a confidential negotiating process. Apparently, suppliers do not ordinarily prepare or maintain "list" prices for their equipment, but instead set prices through negotiations with individual purchasers. While vendors obviously cannot withhold purchase prices from buyers, they may choose to avoid doing business with entities that might subject the prices to disclosure. Indeed, SWBT has submitted a letter from one supplier, Reliance Comm/Tec, that has refused to provide SWBT with prices for virtual collocation transport equipment in light of the possibility that such information might be made public. Letter from Thomas A. Pajda to Andrew S. Fischel (Sept. 27, 1994) forwarding letter from Lyle Frank to Harlan Johnson (Sept. 26, 1994). Disclosure, thus, threatens the Commission's ability to obtain accurate equipment prices from carriers. Fear of disclosure could also discourage suppliers from awarding discounts to buyers that they believe might be forced to disclose prices. A supplier's refusal to deal with certain carriers or to increase prices beyond what would normally be charged, could compromise the effectiveness of expanded interconnection by reducing the choices of equipment available to interconnectors through a tariff or increase rates as carriers pass their increased costs on to ratepayers.

Disclosure could also cause vendors to suffer substantial competitive harm. When products are sold at individually negotiated prices, buyers receive a clear competitive advantage if they know the prices that other buyers have been charged. Competitive harm could also ensue as vendors obtain information necessary to underprice their

[4] Under the FOIA, disclosure to one party generally compels disclosure to all parties. *United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 771 (1989).

[5] For instance, U S West has submitted "nonproprietary list prices" which apparently were developed by its vendors specifically to enable U S West to set rates for its virtual collocation service.

competitors. In either instance, equipment vendors would find the normal price negotiation process skewed to their competitive detriment.

We do not believe that SWBT faces a similar competitive threat from disclosure of equipment prices or overhead costs. SWBT has failed to demonstrate that, as a clearly dominant provider of access services, it will suffer substantial competitive harm if these data are revealed to incipient or potential competitors. We agree with SWBT that neither its own past practices with respect to release of overhead costs, nor those of other carriers, are determinative to its confidentiality claim. However, SWBT has offered only conclusory statements to support a finding of competitive sensitivity and has not discussed the level of competition it now faces, the competitive value of overhead costs, or the level of competitive harm that would be likely to occur given its position of dominance. Nonetheless, overhead costs qualify for protection under Exemption 4 since they may be used with SWBT's publicly available rates to calculate equipment costs.[6] Thus, we conclude that SWBT's entire cost support submission may be withheld.

Our analysis should not end here, though, in light of the substantial public interest in affording parties an opportunity to assess the lawfulness of common carriers' rates. Cost support data are routinely available for public inspection under the Commission's rules. 47 C.F.R. § 0.455(b)(11), 47 C.F.R. § 61.49. Although parties are free to challenge a presumption of public availability by requesting confidential treatment under Section 0.459, the Bureau and the Commission generally have not accorded absolute confidentiality to tariff support materials. Even when such materials have been found to merit protection under Exemption 4, limited disclosure has been ordered under protective orders or agreements.*SCIS Disclosure Order; MCI Telecommunications Corp.*, FOIA Control No. 84-144, FCC No. 85-266 (released May 17, 1985).[7] We know of no case in which cost support data have been withheld in their entirety without affording some means for analysis, at least to the parties to the tariff review proceeding.[8]

While we recognize equipment vendors' concern that disclosure might skew the private process of individual price negotiations and redound to their competitive detriment, we also recognize the long history of open tariff proceedings and the public interest concerns that underlie that history. We believe that disclosure pursuant to a protective order strikes an appropriate balance between protecting equipment vendors from competitive harm and ensuring that parties to the virtual collocation tariff review proceeding are able to examine SWBT's rates and comment, to the Commission, as to their lawfulness. Under the attached protective order, access to SWBT's cost support filing would be limited to personnel directly involved in reviewing SWBT's virtual collocation rates for the purpose of filing comments in the tariff review proceeding. Those individuals would be prohibited from using the information for any other purpose. Disclosure under such terms would permit interested parties to assess fully the lawfulness of SWBT's virtual collocation rates. While we recognize that equipment vendors might prefer absolute protection for their prices, we believe that limited disclosure under a protective order reasonably assures that confidential price information will not be used for competitive purposes. We have not been presented any information to suggest that complete withholding is necessary to protect the vendors' competitive interests or, conversely, that widespread release under the FOIA is necessary to permit review of SWBT virtual collocation rates.

Accordingly, the requests for inspection filed by MFS, MCI, and ALTS are hereby GRANTED IN PART and DENIED IN PART. Pursuant to Section 0.461(h)(2), you may seek review of the Bureau's decision to impose limits upon disclosure of SWBT's cost support data pursuant to the attached protective order. SWBT and the equipment vendors identified in footnote 2 may seek review of the Bureau's decision to permit disclosure as provided by the protective order. Any such applications for review should be filed with the Office of the General Counsel within ten working days from the date of this ruling. SWBT's cost support data will be withheld until SWBT and the equipment vendors have had an opportunity to exhaust their appeal rights.

Sincerely,

Kathleen M. H. Wallman
Chief, Common Carrier Bureau

Attachment

cc: Thomas A. Pajda, SWBT
Robert Zuccaire, Fujitsu
G. T. Bay, AT&T
Wilf Cameron, Northern Telecom
Donald R. Gutzmer, Tellabs

[6] Even materials that would be unlikely to cause substantial competitive harm if viewed alone may be withheld when they could be combined with other available materials to reveal competitively damaging information. *See Timken Co. v. United States Customs Service*, 491 F. Supp. 557, 559.

[7] The *SCIS Disclosure Order* recounts the Commission's long-established preference for open tariff proceedings. 7 FCC Rcd 1526, 1532.

[8] In the *SCIS Disclosure Order*, the Bureau found that some cost support materials were so extraordinarily sensitive that they should not be disclosed to the parties to the tariff review proceeding, even under a protective order. In that case, the Bureau ordered complete disclosure to an independent auditor and devised a procedure whereby the parties could submit questions to the auditor. We have no information suggesting that virtual collocation equipment prices are so sensitive that such unusual treatment is merited.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	File Nos. 206462, 206472
	206463, 206473
Applications of the	206464, 206474
State of Arizona,	206465, 206475
Department of Corrections	206466, 206476
for new and modified Police	206467, 208964
Radio Service Facilities	206468, 208965
	206469, 208966
	206470, 208967
	206471, 208968
	208969

MEMORANDUM OPINION AND ORDER

Adopted: November 2, 1994; Released: November 9, 1994

By the Chief, Licensing Division, Private Radio Bureau:

1. The Department of Corrections of the State of Arizona ("Department") has filed license applications in order to modernize its communications at numerous Arizona state prisons. On June 15, 1994, the Department requested a waiver of the frequency coordination procedure for these applications. The Department alleges that it has received discriminatory treatment from the public safety frequency coordinator, Associated Public-Safety Communications Officers, Inc. ("APCO").

2. The Department pleads that it has experienced unprecedented growth in the inmate population. Over the past eight years, the inmate population has increased more than 200 percent. The Department presently operates on three frequency pairs, two of which are subject to interference from radios operating near Lake Mead, Nevada and southern California. Because the Department's attempts to expand its radio network are two years behind schedule, it will lose money budgeted for that purpose if it cannot obtain licenses within a few more weeks.

3. The Department alleges that in 1992 and 1993 it conducted research and found unused frequencies that would have enabled it to improve the performance of its public safety radio system. The Department contacted the City of Scottsdale, which had abandoned certain frequencies when it implemented a new communications system. At the Department's request, the City of Scottsdale contacted APCO to relinquish the frequencies. APCO, despite assurances to Department that it was working on the problem, and would assist in finding a solution, then gave the frequencies to another licensee. The Department also alleges that on other occasions it has been dealt with in a discriminatory fashion by APCO. The Department alleges that APCO has consistently taken the position that no frequencies are available even after the Department's own research indicates otherwise.

4. The Department alleges that the City of Peoria, Arizona had a similar experience with the Arizona frequency coordinator. The City ultimately requested and received relief from the frequency coordination process after documenting its difficulties with the Arizona APCO coordinator.

5. Having found available frequencies, the Department has requested a waiver allowing it to circumvent the frequency coordination process because it fears that APCO will somehow assign to other entities the frequencies cited in its applications. The Department submitted detailed maps and charts of the frequency research. By letter dated September 14, 1994, we requested that APCO comment on the waiver request and the associated charts (delineating the proposed use of the frequencies in question).[1] APCO filed a letter objecting to the Department's request. APCO's response is vague and does not contain any substantive objection to the use of the requested frequencies by this applicant. In response to the validity of the Department's allegations, APCO simply states that its local advisor, Sam Bass, does not have any record of written or verbal requests from the Department for the City of Scottsdale frequencies. The response contains no statement from Mr. Bass. APCO has apparently chosen not to address the accuracy of the Department's allegations.

6. In this case, given the unanswered allegations of discriminatory treatment from the coordinator, the applicant has demonstrated good cause for the waiver of the frequency coordination requirement contained in 47 C.F.R. § 90.175. Actions of the frequency coordinators are subject to the continuing oversight of the Commission. *In the Matter of Frequency Coordination in the Private Land Mobile Radio Services,* 103 FCC 2d 1093 (1993) (paras. 126-27). Given the critical nature of the communications at issue, and the evidence of discriminatory treatment, we conclude that it is in the public interest to proceed with processing of the Department's applications. *WAIT Radio v. FCC,* 418 F.2d 11153 (D.C. Cir. 1969). The Bureau will also consider whether to conduct an independent inquiry into the matters raised in the Department's waiver request.

7. Accordingly, IT IS ORDERED THAT the waiver request made by the Arizona Department of Corrections seeking relief from the frequency coordination requirements of 47 C.F.R. § 90.175 with respect to the above captioned applications IS GRANTED pursuant to the authority of 47 C.F.R. § 1.3.

FEDERAL COMMUNICATIONS COMMISSION

Gary L. Stanford
Chief, Licensing Division
Private Radio Bureau

[1] Letter from Deputy Chief, Licensing Division, to APCO dated September 14, 1994. APCO responded by letter from the Director of APCO Automated Frequency Coordination, Inc. dated October 10, 1994.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICASKY CORPORATION — File No. I-T-C-94-419

Application for authority to use its Miami, Florida earth stations to provide capacity to international common carriers.

ERRATUM

Released: November 9, 1994

By the Chief, Telecommunications Division:

1. On November 1, 1994, the Commission released an Order, Authorization and Certificate in the above-captioned matter (DA-94-1192). Paragraph 3 is corrected to read:

> "3. IT IS FURTHER ORDERED that AmericaSky shall only provide earth station capacity for services: (a) that are consistent with the Title III authority for the earth stations being used; and (b) for which its customers have the requisite Title II authority to provide."

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ACCESS TELECOM File No. I-T-C-94-463

Application for authority to acquire and operate facilities for service between Guam and the United States mainland and Hawaii, and between Guam and Pacific Ocean Region points.

ORDER AND AUTHORIZATION

Adopted: November 2, 1994; Released: November 9, 1994

By the Chief, Telecommunications Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the Guam and the United States mainland and Hawaii, and between Guam and Pacific Ocean Region points by Access Telecom (Access).

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-463 IS GRANTED and Access is authorized to:

a. lease from Comsat and operate 60 64-kbps voice-grade satellite circuits between an appropriately licensed earth station on Guam and INTELSAT satellites over the Pacific Ocean, connecting with similar circuits between the satellites and earth stations in the points listed in the Appendix hereto, furnished by Access' correspondents;

b. lease from Comsat and operate 32 64-kbps voice-grade satellite circuits between the earth station on Guam and the INTELSAT Pacific Ocean Region satellite, connecting with similar circuits between the satellite and an appropriately licensed United States mainland earth station and an appropriately licensed earth station in Hawaii, furnished by its correspondents;

c. lease and operate voice-grade circuits in the appropriately licensed Guam earth stations to be used in conjunction with the satellite space segment capacity;

d. lease and operate necessary connecting facilities on Guam between the earth station and Access' operating office;

e. use said facilities to provide Access' regularly authorized services between Guam and the United States mainland (24 circuits) and Hawaii (eight circuits), and between Guam and the points listed in the Appendix.

3. IT IS FURTHER ORDERED that our authorization of Access to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and the points listed in the Appendix -- that is, private lines which originate in the United States and terminate in any of the points listed in the Appendix or which originate in one of the points listed in the Appendix and terminate in the United States. In addition, Access may not -- and Access' tariff must state that its customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or the foreign end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that any of the points listed in the Appendix affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559 (1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1992), *petition for reconsideration pending.*

4. IT IS FURTHER ORDERED that neither Access nor any persons or companies directly or indirectly controlling or controlled by Access, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which Access or any persons or companies controlling or controlled by Access are parties.

5. IT IS FURTHER ORDERED that the applicant shall file copies of any operating agreement it enters into with its foreign correspondent with the Commission within 30 days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

6. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

8. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.15(b) of the Commission's Rules, 47 C.F.R. §63.15(b), for the common carrier facilities authorized herein.

9. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

10. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

APPENDIX

COUNTRIES TO BE SERVED VIA INTELSAT PACIFIC OCEAN SATELLITES

Australia-2 circuits
Japan-l6 circuits
Micronesia-4 circuits
Palau-4 circuits
People's Republic of China-4 circuits
Philippines-8 circuits
Republic of Korea-8 circuits
Saipan-8 circuits
Taiwan-4 circuits
Thailand-2 circuits

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMMUNICATION TELESYSTEMS INTERNATIONAL — File No. I-T-C-94-476

Application for authority to acquire and operate facilities in the PTAT-1 Cable System for provision of service between the United States and the United Kingdom.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: November 2, 1994; Released: November 9, 1994

By the Chief, Telecommunications Division:

1. The above-captioned uncontested application, filed by Communication Telesystems International (CTS), requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate capacity in the Private Transatlantic Telecommunications Cable System (PTAT-1) for the provision of communications services between the United States and the United Kingdom. The application was placed on public notice on September 7, 1994. No comments were received.

2. CTS, a corporation organized under the laws of the State of California, is a nondominant facilities based carrier. CTS proposes to acquire on an Indefeasible Right of User (IRU) basis, two 2.048 Mbps half-circuits in PTAT-1, for the provision of authorized international communications services between the United States and the United Kingdom.

3. The Commission stated in its Private Submarine Cable Decision[1] that it would require common carriers wishing to acquire capacity in PTAT-1 to file applications pursuant to Section 214 of the Communications Act.[2] In this context, we find that CTS' application contains all of the information necessary under Section 63.01 of the Commission's Rules.[3] Furthermore, we find that CTS' application does not raise any economic impact issues.[4]

4. Upon consideration of the application, we find that authorization of the facilities requested will serve the public convenience and necessity.

5. Accordingly, IT IS ORDERED that application File No. I-T-C-94-476 IS GRANTED, and CTS is authorized to:

a. acquire on an IRU basis a one-half interest in and operate two 2.048 Mbps circuits in the PTAT-1 Cable System between the United States and the United Kingdom;

b. lease and operate necessary domestic connecting facilities;

c. use said facilities for the provision of CTS' authorized services, including switched voice and data, and private line services, between the United States and the United Kingdom.

6. IT IS FURTHER ORDERED that neither CTS nor any persons or companies directly or indirectly controlling or controlled by CTS, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which CTS or any persons or companies controlling or controlled by CTS are parties.

7. IT IS FURTHER ORDERED that applicant shall file copies of any operating agreement it enters into with its foreign correspondent with the Commission within 30 days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

8. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

9. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

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[1] Private Submarine Cable Decision, 100 FCC 2d 1033 (1985).

[2] This requirement was restated in the *International* decision in which the Commission determined that it would require nondominant carriers to file applications to acquire capacity from any future private cable sources. International Competitive Carrier Policies, 102 FCC 2d 812, 845 (1985) (*"International"*). Information requirements for Section 214 applications are found in Section 63.01 of the Commission's Rules, 47 C.F.R. §63.01.

[3] The Commission places no special burdens on any carrier filing an application to use private cable capacity. *See* Pacific Telecom, Inc., Request for Clarification of Policies Concerning Use of Independent Cables, File No. ISP-89-002, 4 FCC Rcd 4454 (1989) (*"Pacific Telecom"*).

[4] In its *Pacific Telecom* decision, the Commission stated that it has authority under its public interest mandate under Section 214 to consider sua sponte any economic impact issues, including traffic diversion issues, that may be raised in an application by a common carrier to acquire private cable capacity or to consider such issues when raised by third parties filing comments in response to an application. However, the Commission stated that it does not anticipate that common carrier acquisition of private cable capacity will normally give rise to such issues. Even if an applicant seeks to acquire a substantial amount of private cable capacity and to offload capacity on a common carrier cable or change a prior commitment for use of capacity in planned common carrier facilities, the Commission stated that the presence of these factors would not be conclusive evidence of economic harm. The Commission further stated that the "[r]esolution of any economic impact issues that may arise, and a determination of whether grant of the application would serve the public interest, would be dictated by the circumstances of the particular case before us." *Id.* at 4456.

10. IT IS FURTHER ORDERED that this authorization is subject to the terms and conditions of any order for the PTAT-1 Cable System, issued under the act entitiled "An Act relating to the landing and operation of submarine cables in the United States" (47 U.S.C. §§34-39).

11. IT IS FURTHER ORDERED that the applicant shall file an application pursuant to Section 214 of the Communications Act of 1934, as amended, before adding any circuits or channels of communication for the provision of service over the PTAT-1 Cable System.

12. This order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-168

In the Matter of

Modifying Renewal Dates for
Certain Stations Licensed Under
Part 74 of the Commission's Rules; and

Revising FCC Form 303-S, Application
for Renewal of License for Commercial
and Noncommercial AM, FM, or TV
Broadcast Stations, TV and FM Translator
Stations, and Low Power TV Stations

REPORT AND ORDER

Adopted: October 12, 1994; Released: November 4, 1994

By the Commission:

1. The Commission, by this decision, changes the license renewal dates of FM radio and television translator stations and low power television (LPTV) stations licensed under Part 74 of the Commission's Rules, to coincide with those of full service radio or television stations operating in the same state. The Commission also eliminates FCC Form 348, *Application for Renewal of a Low Power TV, TV Translator, or FM Translator Station License*, and revises FCC Form 303-S, *Application for Renewal of License for Commercial and Noncommercial Educational AM, FM and TV Broadcast Stations*, to include information requests formerly included in Form 348. These form revisions will permit translator stations co-owned with primary stations in the same state which rebroadcast the same signal as the primary station to file for license renewal on a single application form with their primary station.

2. The *Notice of Proposed Rule Making* (*NPRM*) initiating this proceeding[1] indicated that, because the current rules do not provide a unified renewal schedule, many licensees that commonly own both full service stations and FM or television translator or LPTV stations located in the same state are required to file multiple renewal applications at different times. Further, because Forms 303-S and 348 are substantially similar in nature, such licensees are required to submit the same information more than once in a brief period of time. The majority of parties commenting in response to the *NPRM*[2] agreed with the Commission's initial view that conforming the renewal dates for full service and for FM and TV translators and LPTV stations in the same state and revising Form 303-S would streamline the license renewal process, eliminate paperwork burdens on licensees and on the Commission, and simplify the renewal process for interested members of the public. By coordinating the renewal cycles and merging the application forms, the Commission anticipates saving licensees who own both full service stations and LPTV or translator stations in the same state, time spent in providing duplicate renewal information, and avoiding confusion as to the correct renewal dates. These revisions should also save the Commission staff resources by reducing the likelihood of a licensee filing an application at the wrong time, which must then be returned by the Commission. During the last FM translator renewal cycle (1988-1991) twenty percent of all of the applications received were either filed early or late, causing both the licensee and the Commission time and effort in refiling and reprocessing the applications. The Commission believes that by unifying the renewal cycle for LPTV, translator, and full service stations within a state, instances of such misfiled applications will be substantially reduced.[3]

3. The *NPRM* noted that the transition to a revised renewal schedule would entail a one time additional burden on LPTV and translator stations. More particularly, it would result in some LPTV and translator stations receiving short term renewals in order to synchronize their renewal cycles with those of full service stations in their states. In order to allow such stations to file for renewal coincident with the renewal dates of full service stations in the same states, the *NPRM* discussed alternatives that would avoid this situation. It rejected one solution – which would allow such licensees to file for renewal at their normal time and to receive a license for a license term set to expire when the license of their full power counterparts expires. The Commission concluded that this option would be unworkable because certain of these LPTV and translator renewal applicants who would file before the full service stations in their states would then have been granted licenses for terms longer than the maximum five or seven years (for TV and radio station licenses, respectively) prescribed in Section 307(c) of the Communications Act.

4. The *NPRM* suggested that, instead, such LPTV and translator stations could file for renewal twice during the transition period to the new schedule, once at their normal renewal time for a short term license, and again when the full service stations in their states became due for renewal. This alternative would avoid conflict with Section 307(c), but concerned some of the commenters.

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[1] *See* 7 FCC Rcd 4948 (1992).

[2] Comments in this proceeding were filed by Pulitzer Broadcasting Company; The Post Company; Central Virginia Educational Telecommunications Corporation; Minnesota Public Radio; National Association of Broadcasters (NAB); National Public Radio; Community Broadcasters Association (CBA); and Island Broadcasting Company (Island). Joint Comments were filed by Great American Television and Radio Company, Inc., and Kelly Television Company; and by Mississippi Authority for Educational Television, Oregon Commission on Public Broadcasting, University of North Carolina, and Western New York Public Broadcasting Association (Joint Parties). A Reply Comment was filed by CBA.

[3] One commenting party, NAB, asked that the Commission, in eliminating Form 348, be sure to include in revised Form 303-S, a question to verify that the applicant has complied with all relevant FM translator rules, particularly those relating to funding and support of translators outside the full service station's Grade B signal contour. This request is considered and discussed in greater detail in paragraph 10 *infra*.

Island, for example, notes that LPTV licensees in New York would have to file two renewals within twelve months.[4] LPTV interests, such as CBA, further argue that, requiring LPTV operators who fall into the category to file for renewal twice during the transition to the new renewal schedule, would burden them with filing an extra renewal application, resulting in costs and risks that "will exceed the small benefit that might accrue from allowing full power station licensees to file full power, low power, and translator renewal applications at the same time."[5] Such commenters also appear to believe that LPTV stations are more likely than translator stations to incur challenges to their license renewal applications, and that this risk will be increased if such operators must file twice for renewal during the transition to the new schedule.[6]

DISCUSSION

5. We believe that substantial savings to the Commission, broadcasters and the public can be realized by conforming the renewal dates for translator and low power television stations to those for full service stations of the appropriate service (i.e., radio or television) in the same state. We expect these savings to include a streamlined renewal process, the elimination of needless paperwork burdens and a reduction in the incidence of filing errors. Accordingly, we will grant translator and LPTV applicants filing for license renewal a short term renewal with the license period extending only until the end of the license period for full service stations of the relevant type located in the same state; at that time they will have to file again for a full term license renewal. We recognize that this action will require two renewal applications to be filed by some translator and low power licensees within a brief period of time. However, this is a one-time cost that we believe is more than counterbalanced by the long terms savings that will accrue from the synchronization of renewal schedules and consolidation of forms that this action will achieve.[7]

6. There does not appear to be any way to avoid the above-described one-time additional short term renewal for translators and LPTV stations located in some states. If we were to grant LPTV and translator licensees renewals that would last until the end of the full service stations' license terms in situations in which LPTV or translator licenses come up for renewal before those of full service stations in their state, this would violate the limitation on license terms specified in Section 307(c) of the Communications Act of 1934, as amended. If we were to protect translator and LPTV licensees that have to file for renewal twice within brief periods from renewal challenges would violate Section 309 of the Act. However, there is some ameliorative action that we can take. Pursuant to Section 8(d)(2) of the Act, we will waive the application fees for any translator or LPTV license renewal application that is required by this action to be filed within 26 months of the station's most recent prior renewal filing.[8]

7. In situations where full service stations must file for renewal prior to translator and LPTV stations in their state, we will permit, but not require the translator and LPTV stations to file an early renewal to place them on the same renewal schedule as full service stations in their state. We strongly encourage translators and LPTV stations to file coincident with the corresponding full service stations for that state. By doing so, translator stations commonly-owned with primary stations in the same state which rebroadcast the same signal as the primary station can realize the benefit of filing for renewal on a single application form in the upcoming renewal cycle as opposed to waiting until the following cycle. Licensees of translator and LPTV stations that do not elect to take advantage of this option will be required to file for license renewal at the time presently required by their license authorization. In this latter case, a shorter term renewal will be issued for a period to expire coincident with the expiration date for full service stations' licenses in that state.

8. In its comments, CBA expresses the fear that there will be increased instances of application processing errors if full power television renewals and those of LPTV and translator stations are combined into one form. We see no reason to believe this will occur. As stated in the *NPRM*, incidences of errors should actually be reduced by the action taken today which is intended to simplify, not complicate renewal procedures. Nor can we agree with CBA's position, as expressed in its Reply Comments, that the views of LPTV licensees -- who oppose the change being made herein -- deserve greater weight than those of translator operators -- who tend to favor our proposal -- in considering what action should be taken in this proceeding.

9. CBA also asks that, before taking the actions recommended in the *NPRM*, the Commission resolve other LPTV issues raised in RM-7772, initiated by Petition For Rulemaking filed by CBA. The Commission adopted a *First Report and Order* in MM Docket 93-114 responding

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[4] *See* Island Comments at Pgs. 3-4. This repetitive filing would result from situations in which the translator or LPTV station's license is scheduled to expire *prior* to the expiration of the license terms for full service stations located in the same state. In such instances, the translator or LPTV station would have to file for renewal at the time its license expired and would receive a license the term of which would expire at the same time as those of full service stations of the relevant type (i.e., television or radio) located in the same state. At that time, the translator or LPTV licensees would have to file again.

[5] CBA Comments at 1-2.

[6] Additionally, such parties believe that combining LPTV, translator and full power television license renewal on the same form could lead to errors in the Commission's records due the separate processing of the same application in the LPTV and Television Branches or the Auxiliary and FM Radio Branches and need to physically carry the application from one location to another during processing. (*See* CBA Comments at 2.) As discussed in paragraph 8, the Commission sees no such likelihood.

[7] The fear expressed by some commenters that accelerated renewal filings will be subject to increased renewal challenges appears to be one more of perception than substance. Only 3 challenges to LPTV station renewals were filed during the last renewal cycle (1991-1994); two of those were subsequently withdrawn. In the 1988-1991 renewal cycle fewer than six challenges were filed against translator applications.

[8] Section 8(d)(2) of the Act, 47 U.S.C. §158(d)(2), provides, "The Commission may waive or defer payment of a charge in any specific instance for good cause shown, where such action would promote the public interest."

to CBA's Petition on May 19, 1994.[9] That decision modified the Commission's standard for acceptance of applications, expanded the Commission's waiver policy regarding terrain shielding, and allowed LPTV operators to use four-letter call signs rather than the existing five character call signs consisting of letters and numbers. The Commission deferred a decision on whether to narrow the definition of what constitutes a major LPTV station modification, choosing to consider this more complex matter further and issue a decision at a later date. We believe that these issues are beyond the scope of this proceeding and are more appropriately resolved in MM Docket 93-113. We further believe that the administrative relief and other benefits inherent in the unification of the renewal cycles and the merging of Forms 303-S and 348 should not be delayed pending a decision on the remaining issue in Docket 93-113 which, we believe, has no connection with the synchronization of license terms.

10. Finally, NAB requests that the Commission, in modifying FCC Form 303-S, include a certification that the applicant has complied with all relevant FM translator rules, particularly those relating to funding and support. We will add to the form a certification related, but not identical, to that requested by NAB.[10] Specifically, Question 5(a) on the revised Form 303-S asks for confirmation that the applicant is in compliance with Section 74.1232(d) of the Commission's Rules, which prohibits the common ownership of, or any connection between the FM translator station and the commercial primary station being rebroadcast if the coverage contour of the translator extends beyond the protected contour of the primary station. Similarly, Question 5(b) asks whether the applicant is in compliance with Section 74.1232(e) of the Commission's Rules, which prohibits an FM translator whose coverage extends beyond the protected contour of the commericial primary station being rebroadcast from receiving any support from the primary station or any entity with a connection to the primary station (except for specified technical assistance), before, during, or after construction. This, we believe, will highlight the restrictions placed by our rules on the support translator stations can receive from their primary stations and will assist in achieving compliance with these restrictions.

Final Regulatory Flexibility Analysis

I. Need and Purpose of these Actions:

11. The actions taken in this decision are intended to streamline the license renewal process, reducing the administrative and paperwork burdens on licensees and on the Commission and simplifying the renewal process not only for licensees but for interested members of the public.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:

12. No comments were filed in response to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered and Rejected:

13. The alternative to the actions taken in this proceeding would be to take no action but to continue to require that full service station owners who also own translator or LPTV stations in the same state file similar renewal information multiple times in a short time-period. In modifying Form 303-S and conforming the translator and LPTV renewal dates to those of full power stations in their States, the Commission is reducing the administrative costs and burden on such licensees. The Commission, in granting short term renewals to LPTV and translator stations whose licenses are due for renewal before those of their full power counterparts in the same state, but granting them a waiver of some filing fees, is selecting the course of action which will be most conducive to the objective of streamlining the translator and LPTV renewal process consistent with law at the least burden to licensees.

ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to Sections 4 (i) and 303 of the Communications Act of 1934, as amended, that Parts 1, 73 and 74 of the Commission's Rules are amended as indicated below, effective upon approval of the form revisions by the Office of Management and Budget.

15. IT IS FURTHER ORDERED that FCC Form 348 is eliminated and FCC Form 303-S is amended as indicated below. These form amendments are contingent on approval of the Office of Management and Budget, and therefore will become effective upon such approval.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

Title 47, Parts 1, 73, and 74 of the Code of Federal Regulations are amended as follows:

PART 1 -- COMMISSION ORGANIZATION

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 USC 151. 154.303. amd 309(j), unless otherwise noted.

2. Section 1.1104 is amended by removing all references to FCC Form No. 348 throughout the section and adding in its place FCC Form No. 303-S.

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[9] *See First Report and Order* in MM Docket No. 93-114, 9 FCC Rcd 2555, 1994.

[10] Our decision herein is a narrow one. In allowing full service station licensees who also own translator or LPTV stations in the same state to file for license renewal on the same form, we are not permitting multiple broadcast station license filings on a single form in any other context.

3. Section 1.2003 is amended by revising the reference to FCC 303-S and by removing the reference to FCC 348 to read as follows:

Section 1.2003 Applications affected.

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FCC 303-S Application for Renewal of License for AM, FM, TV, Translator, or LPTV Station;

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PART 73 -- RADIO BROADCAST SERVICES

4. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

5. Section 73.1020 is amended by revising paragraphs (a)(1) through (a)(18) to read as follows:

Section 73.1020 Station license period.

(a) ***

(1) Maryland, District of Columbia, Virginia and West Virginia:

(i) Radio stations, October 1, 1995

(ii) Television stations, October 1, 1996

(2) North Carolina and South Carolina:

(i) Radio stations, December 1, 1995

(ii) Television stations, December 1, 1996

(3) Florida, Puerto Rico and the Virgin Islands:

(i) Radio stations, February 1, 1996

(ii) Television stations, February 1, 1997h)

(4) Alabama and Georgia:

(i) Radio stations, April 1, 1996

(ii) Television stations, April 1, 1997

(5) Arkansas, Louisiana and Mississippi:

(i) Radio stations, June 1, 1996

(ii) Television stations, June 1, 1997

(6) Tennessee, Kentucky and Indiana:

(i) Radio stations, August 1, 1996

(ii) Television stations, August 1, 1997

(7) Ohio and Michigan:

(i) Radio stations, October 1, 1996

(ii) Television stations, October 1, 1997

(8) Illinois and Wisconsin:

(i) Radio stations, December 1, 1996

(ii) Television stations, December 1, 1997

(9) Iowa and Missouri:

(i) Radio stations, February 1, 1997

(ii) Television stations, February 1, 1998

(10) Minnesota, North Dakota, South Dakota, Montana and Colorado:

(i) Radio stations, April 1, 1997

(ii) Television stations, April 1, 1998

(11) Kansas, Oklahoma and Nebraska:

(i) Radio stations, June 1, 1997

(ii) Television stations, June 1, 1998

(12) Texas:

(i) Radio stations, August 1, 1997

(ii) Television stations, August 1, 1998

(13) Wyoming, Nevada, Arizona, Utah, New Mexico and Idaho:

(i) Radio stations, October 1, 1997

(ii) Television stations, October 1, 1998

(14) California:

(i) Radio stations, December 1, 1997

(ii) Television stations, December 1, 1998

(15) Alaska, American Samoa, Guam, Hawaii, Mariana Islands, Oregon and Washington:

(i) Radio stations, February 1, 1998

(ii) Television stations, February 1, 1999

(16) Connecticut, Maine, Massachusetts, New Hampshire, Rhode

Island and Vermont:

(i) Radio stations, April 1, 1998

(ii) Television stations, April 1, 1999

(17) New Jersey and New York:

(i) Radio stations, June 1, 1998

(ii) Television stations, June 1, 1999

(18) Delaware and Pennsylvania:

(i) Radio stations, August 1, 1998

(ii) Television stations, August 1, 1999

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6. Section 73.3500 is amended by revising the reference to Form 303-S ane removing the reference to Form 348 to read as follows:

Section 73.3500 Application and report forms.

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303-S Application for Renewal of License for AM, FM, TV, Translator, or LPTV Station.

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PART 74 -- EXPERIMENTAL RADIO, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

7. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, 554.

8. The heading for Part 74 is revised to read as follows:

PART 74 – EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

9. Section 74.15 is amended by revising paragraph (d) to read as follows:

Section 74.15 Station license period.

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(d) Initial licenses for low power TV, TV translator and FM translator stations will ordinarily be issued for a period running until the date specified in Section 73.1020 of this Part for full service stations operating in their State or Territory, or if issued after such date, to the next renewal date determined in accordance with Section 73.1020. Low power TV and TV translator station licenses will ordinarily be renewed for 5 years and FM translator station license will be renewed for 7 years. However if the FCC finds that the public interest or necessity will be served, it may issue either an inital license or a renewal therof for a lesser term. The FCC may also issue a license renewal for a shorter term if requested by the applicant. The time of expiration of all licenses will be 3 a.m. local time, on the following dates, and thereafter according to the schedule for full service stations in their states as reflected in Section 73.1020 of this Part:

(1) Nevada:

(i) FM translators, February 1, 1997

(ii) LPTV and TV translators, February 1, 1998

(2) California:

(i) FM translators, April 1, 1997

(ii) LPTV and TV translators, April 1, 1998

(3) Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, West Virginia, Ohio and the District of Columbia:

(i) FM translators, June 1, 1997

(ii) LPTV and TV translators, June 1, 1998

(4) Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, Missouri, Kentucky, Tennessee, Indiana, Illinois, Michigan, Wisconsin, Puerto Rico and the Virgin Islands:

(i) FM translators, August 1, 1997

(ii) LPTV and TV translators, August 1, 1998

(5) Oklahoma and Texas:

(i) FM translators, October 1, 1997

(ii) LPTV and TV translators, October 1, 1998

(6) Kansas and Nebraska:

(i) FM translators, December 1, 1997

(ii) LPTV and TV translators, December 1, 1998

(7) Iowa and South Dakota:

(i) FM translators, February 1, 1998

(ii) LPTV and TV translators, February 1, 1999

(8) Minnesota and North Dakota:

(i) FM translators, April 1, 1998

(ii) LPTV and TV translators, April 1, 1999

(9) Wyoming:

(i) FM translators, June 1, 1998

(ii) LPTV and TV translators, June 1, 1999

(10) Montana:

(i) FM translators, August 1, 1996

(ii) LPTV and TV translators, August 1, 1999

(11) Idaho:

(i) FM translators, October 1, 1995

(ii) LPTV and TV translators, October 1, 1996

(12) Washington:

(i) FM translators, December 1, 1995

(ii) LPTV and TV translators, December 1, 1996

(13) Oregon:

(i) FM translators, February 1, 1996

(ii) LPTV and TV translators, February 1, 1997

(14) Alaska, American Samoa, Guam, Mariana Islands and Hawaii:

(i) FM translators, April 1, 1996

(ii) LPTV and TV translators, April 1, 1997

(15) Colorado:

(i) FM translators, June 1, 1996

(ii) LPTV and TV translators, June 1, 1997

(16) New Mexico:

(i) FM translators, August 1, 1996

(ii) LPTV and TV translators, August 1, 1997

(17) Utah:

(i) FM translators, October 1, 1996

(ii) LPTV and TV translators, October 1, 1997

(18) Arizona:

(i) FM translators, December 1, 1996

(ii) LPTV and TV translators, December 1, 1997

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10. The Note following Section 74.733 is amended by removing the reference to 348 in the second sentence and adding in its place 303-S.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Cable & Wireless, Inc. File No. I-T-C-93-328

Application for Authority Under Section 214 of the Communications Act to Resell International Private Lines Interconnected into the Public Switched Network between the United States and Canada, the United Kingdom, Australia, and Sweden.

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: November 2, 1994; Released: November 4, 1994

By the Chief, Telecommunications Division:

I. INTRODUCTION

1. On September 9, 1993, Cable and Wireless, Inc. (CWI) filed the above-captioned application seeking authority pursuant to Section 214 of the Communications Act (the Act), as amended, to resell international private lines interconnected at both ends to the public switched networks (PSNs) for the provision of switched services,[1] including switched voice, data and facsimile, between the United States and Canada, the United Kingdom, Australia and Sweden.

II. BACKGROUND

2. We placed the application on public notice on September 22, 1993. AT&T filed a petition to deny.[2] FGC, Inc. (FGC) filed comments in support of CWI's application. Telia AB (Telia) and IDB Communications Group, Inc. (IDB) also filed comments.[3] In response to the petitions to deny and comments, CWI filed an opposition to the petitions to deny and reply comments. AT&T, British Telecom (BT), Sprint, FGC, and Telstra Corporation Limited (Telstra)[4] then responded to CWI's pleadings. Subsequently, in a letter dated March 9, 1994, CWI stated that it would not object to partial consideration of and action on the instant application, with deferral to a later date of those issues left unresolved.[5] No comments were received with respect to CWI's letter. In this order, we act only on the portion of CWI's application for authority to resell international private lines for the provision of switched services between the United States and Canada. Accordingly, we address below the parties' arguments relevant to that specific portion of CWI's application. We defer action on the remaining portions of CWI's application (resale of international private lines for the provision of switched services between the United States and the United Kingdom, Australia and Sweden).[6]

III. DISCUSSION

3. IDB states that CWI should not be subject to the Commission's equivalency requirement because the policy only applies to international private line resale. IDB asserts that CWI's application should be treated as a request for authority to operate as a facilities-based carrier because the application states that CWI proposes to lease the underlying transmission facilities from U.S. carriers.[7] By letter dated July 27, 1994, CWI clarified that it proposed to resell the international private line services of AT&T, MCI, Sprint and IDB pursuant to their filed and effective FCC tariffs, and/or pursuant to negotiated contracts with authorized international carriers.[8] CWI's application is thus subject to the Commission's equivalency requirement.

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[1] Pursuant to the Commission's international private line resale policy, the Commission authorizes resale of international private lines for interconnected private line or switched services only to countries that afford resale opportunities equivalent to those available in the United States. The Commission's equivalency policy was first set out in *Regulation of International Accounting Rates, CC Docket 90-337, Phase II, First Report and Order*, 7 FCC Rcd 559 (1992). *See also Regulation of International Accounting Rates, CC Docket 90-337, Phase II Order on Reconsideration and Third Further Notice of Proposed Rulemaking*, 7 FCC Rcd 7927 (1992).

[2] Sprint Communications Company L.P. (Sprint) filed a petition to deny in part, but did not address the issue of Canadian equivalency for international private line resale. In its petition, Sprint claims that CWI does not meet its burden of establishing equivalency for the United Kingdom, Australia and Sweden. *See infra* note 6.

[3] Until July 1, 1993, Telia was a government-owned telecommunications provider in Sweden, known as "Televerket, the Swedish Telecom Group". The Swedish Parliament separated the operational and regulatory functions of Televerket, and thus Telia, a limited commercial company, was formed to carry out the operational functions. Telia limited its comments to a discussion regarding the Swedish telecommunications market.

[4] Telstra is a government-owned telecommunications provider in Australia, and is one of two "General Carriers" licensed by the Australian Ministry for Transport and Communications. Telstra limited its comments to a discussion of the telecommunications market in Australia.

[5] *See* Letter from Charles A. Tievsky, Regulatory Attorney, CWI to George S. Li, Chief, International Facilities Division, Common Carrier Bureau, FCC (March 9, 1994).

[6] The Commission on September 19, 1994, determined that equivalent international private line resale opportunities exist in the United Kingdom for U.S.-based carriers seeking to provide service between the United States and the United Kingdom. *ACC Global Corporation*, FCC 94-236, released October 6, 1994. We will next turn to CWI's request for international resale authority to the United Kingdom in light of the Commission's recent decision and the record developed in this particular Section 214 proceeding.

[7] Subsequent to filing its comments in this proceeding, IDB filed a petition for rulemaking asking the Commission to adopt a uniform definition of facilities-based carrier for purposes of Commission rules and policies governing international common carriers. RM 8392 (filed October 29, 1993) (*see* Public Notice of November 30, 1993).

[8] *See* Letter from Charles A. Tievsky, Senior Regulatory Attorney, CWI to Jennifer Warren, Esquire, FCC (July 27, 1994).

4. AT&T opposes grant of CWI's application for resale of international private lines for switched services between the United States and Canada based on arguments raised in its petition for reconsideration of our initial determination that Canada affords resale opportunities equivalent to those available under U.S. law. During the pendency of this proceeding, the Commission addressed the merits of AT&T's arguments, and reaffirmed its finding of equivalency for Canada in its order onreconsideration.[9]

5. In addition, AT&T argues that CWI's application should be denied because U.S. carriers do not have comparable opportunities to compete in the foreign telecommunication markets where CWI has monopoly and duopoly positions for the provision of telecommunications services. In the past, we have examined applications filed by foreign carriers on a case-by-case basis, balancing our policy in favor of open entry against the potential for discrimination by a foreign carrier against unaffiliated U.S. carriers.[10] Following this approach, the Commission has previously authorized CWI to provide resold switched and non-interconnected private line services to various countries. It has also granted CWI authority to serve Canada on a direct facilities basis. The Commission has not to date adopted a policy of requiring comparable market access as a condition of entry by foreign carriers. We note, however, that AT&T has filed a petition for rulemaking on the issue of foreign carrier entry.[11] Indeed, there may be a need to take a comprehensive look at how we evaluate foreign carrier entry into the U.S. telecommunications market. The development and application of a comparable market access standard, however, is a broad policy change that is appropriately done in a rulemaking proceeding, not in an individual Section 214 proceeding. We thus evaluate this application in accordance with existing Commission precedent.

6. The Commission has previously concluded that the public interest in cost-based telecommunications services would be served by the encouragement of international private line resale, which should, *inter alia*, exert downward pressure on high, above-cost international accounting rates. To ensure that such resale does not exacerbate the U.S. net settlements deficit, the Commission has conditioned its resale policy by requiring U.S. carriers to permit resale of their international private lines only to those countries that afford equivalent resale opportunities. As a result of the Commission's equivalency finding for Canada, resale of interconnected international private lines for the provision of switched and private line services between the United States and Canada is permitted subject to grant of appropriate Section 214 authorization. We find that the present and future public convenience and necessity require the grant of this authorization to CWI, subject to its regulation as a dominant carrier for the provision of the services authorized herein.

7. We note that CWI requests a determination of nondominance on the U.S. - Canada route for the provision of switched services via resold private lines. It incorporates by reference its petition for nondominant status on several private line routes, including the U.S.-Canada route.[12] The Common Carrier Bureau on October 7, 1994, granted CWI nondominant status on several private line routes but deferred taking action on, *inter alia*, CWI's request for nondominant status to Canada in order to examine further the implications of a 20 percent stake in CWI's U.K. affiliate, Mercury Communications, by Bell Canada Enterprises.[13] For the same reasons, we defer acting on CWI's request for a change in regulatory status in this proceeding.

8. Accordingly, IT IS ORDERED that application File No. I-T-C-93-328 IS GRANTED IN PART, and DEFERRED IN PART, and CWI is authorized to resell international private lines for the provision of switched services between the United States and Canada.

9. IT IS FURTHER ORDERED that AT&T's Petition to Deny is denied in part and deferred in part; and that Sprint's Petition to Deny in Part is deferred.

10. IT IS FURTHER ORDERED that CWI is authorized to lease and operate up to 15 E-1 circuits from authorized U.S. carriers[14] for the provision of its authorized resale of international private lines.

11. IT IS FURTHER ORDERED that:

(a) CWI shall file publicly any contracts entered into with other carriers or a contract summary in accordance with Section 203 of the Communications Act, 47 U.S.C. §203, and the *Interexchange Order*;[15]

(b) CWI shall not agree to accept from such other carriers any services that are not made generally available by those carriers to similarly situated customers at the same terms, conditions and rates; and

(c) CWI shall file tariff provisions pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

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[9] *Order on Reconsideration of the fONOROLA/EMI Order*, FCC 94-81, released May 6, 1994. As a result of the *Order on Reconsideration*, however, the Commission established a new policy that all nondominant international private line resellers should file with the Commission semi-annual traffic reports for the three calendar years following the equivalency finding of October 1992. These reports should contain the same information provided in the Section 43.61 annual traffic reports. The new reporting policy does not affect the requirement that dominant international private line resellers file such information on a quarterly basis.

[10] *AmericaTel Corporation*, 9 FCC Rcd 3993, 3996 (1994) (citing *Telefonica Larga Distancia de Puerto Rico*, 8 FCC Rcd 107, 108 (1992)).

[11] *See* AT&T's *Petition for rulemaking on market entry and regulation of international common carriers with foreign carrier affiliations*, RM-8355 (filed September 22, 1993) (*see* Public Notice of October 1, 1993).

[12] *See* Petition for Determination of NonDominant Status on International Private Line Routes, File No. ISP-93-007-ND.

[13] Memorandum Opinion and Order, File No. ISP-93-007-ND, DA 94-1134 (Com. Car. Bur., released October 21, 1994). *See also* Memorandum Opinion and Order, File No. ISP-93-006-ND, DA 94-1133 (Com. Car. Bur., released October 21, 1994).

[14] Initially, CWI intends to resell the private lines of one or more of the following carriers pursuant to contract or tariff: AT&T Tariff FCC No. 9, Sprint Tariff FCC No. 7, MCI/WUI Tariff FCC No. 27, and IDB Tariff FCC No. 2.

[15] *See Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, 5902 (1991) (*Interexchange Order*).

12. IT IS FURTHER ORDERED that the authority granted herein to resell international private lines for the provision of switched services between the United States and Canada is limited to the provision of such services between the United States and Canada only--that is, private lines which carry traffic that originates in the United States and terminates in Canada, or traffic that originates in Canada and terminates in the United States.

13. IT IS FURTHER ORDERED that neither CWI nor any person or companies directly or indirectly controlling it or controlled by it, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which CWI or any such persons or companies controlling or controlled by CWI are parties.

14. IT IS FURTHER ORDERED that CWI shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. Section 43.61.

15. IT IS FURTHER ORDERED that CWI shall file with the Commission within thirty (30) days of execution a copy of any operating agreement it enters into with its foreign correspondents; and that it shall also file with the Commission within 30 days of execution copies of any operating agreements entered into by its parent/affiliates that affect traffic or revenue flows between the United States and Canada; and that it shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. Section 43.51.

16. IT IS FURTHER ORDERED that CWI shall file all arrangements for the interconnection of private lines to the U.S. public switched network pursuant to Section 43.51(a) of the Commission's Rules, 47 C.F.R. Section 43.51(a).

17. IT IS FURTHER ORDERED that CWI, as a dominant carrier, shall request Section 214 authorization for all circuit additions to Canada pursuant to Section 63.01 of the Rules, 47 C.F.R. §63.01.

18. IT IS FURTHER ORDERED that CWI, as a dominant carrier, shall file quarterly reports of revenue, number of messages, and number of minutes of both originating and terminating traffic for all international services between the United States and Canada within 90 days from the end of each calendar quarter.

19. IT IS FURTHER ORDERED that this order may be subject to future modification or revocation pursuant to the outcome of the *Phase II Third Further Notice*, and any other relevant proceedings.

20. IT IS FURTHER ORDERED that grant of this authorization to resell international private lines for the provision of switched services between the United States and Canada is conditioned upon Canada's continuing to afford resale opportunities equivalent to those available under U.S. law.

21. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services Cable and Wireless seeks authorization to provide. The transmission of money is not considered to be common carrier service.

22. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the public notice of this Order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division
International Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-26

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Pago Pago, American Samoa)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 2, 1994; Released: November 10, 1994

By the Acting Chief, Allocations Branch:

1. By *Notice of Proposed Rule Making*, 9 FCC Rcd 1545 (1994), the Commission, on its own motion, proposed the deletion of vacant and unapplied-for Channel 266C1 from Pago Pago, American Samoa. This action was necessitated because the independent nation of Western Samoa recently assigned an FM station to operate on Channel 266 which conflicts with the American Samoa allotment. No comments in response to the *Notice* were received.

2. The *Notice* stated that Channel 226C1 is available for allotment should an interest in applying for the channel be expressed. However, since no party expressed an interest in applying for the channel, Channel 266C1 will be deleted without replacement.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 27, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Pago Pago, American Samoa	--

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services	**CC Docket No. 92-115**
Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Service	**CC Docket No. 94-46 RM 8367**
Amendment of Part 22 of the Commission's Rules Pertaining to Power Limits for Paging Stations Operating in the 931 MHz Band in the Public Land Mobile Service	**CC Docket No. 93-116**

REPORT AND ORDER

Adopted: August 2, 1994 Released: September 9, 1994

By the Commission:

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INTRODUCTION

1. By this *Report and Order*, we revise in its entirety Part 22 of our Rules, which governs the Public Mobile Services.[1] The new Part 22 is considerably shorter than the existing Part 22 that it replaces, and we believe that Public Mobile Services applicants and licensees will find it better organized and easier to understand and use. In our proposal to rewrite Part 22, we identified rule and policy changes that could eliminate outdated and unnecessary information collection requirements, expedite authorization of service, and promote efficient use of the electromagnetic spectrum. We adopt many of these changes herein. These revisions serve the public interest by streamlining and improving the Commission's licensing procedures in ways that will benefit the providers and ultimately the users of mobile services. These changes will further our goals of stimulating economic growth and expanding access to mobile radio networks and services.

BACKGROUND

2. In the *Notice of Proposed Rule Making* (*Notice*)[2], we proposed a comprehensive review and revision of Part 22 of the Rules. We indicated that a revision and update of Part 22 was needed for the following reasons: (1) to ensure that the various rules adopted in individual proceedings since the last major

[1] The Public Mobile Services include the following services: Public Land Mobile Service, Rural Radio Service, Domestic Public Cellular Radio Telecommunications Service, Offshore Radio Telecommunications Service, and the 800 MHz Air-Ground Radiotelephone Service.

[2] Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115, Notice of Proposed Rule Making, 7 FCC Rcd 3658 (1992).

overhaul of Part 22 (in 1983) are consistent with our overall policies; (2) to change some of our Part 22 rules that have become obsolete and unnecessary;[3] (3) to update some of the technical specifications in Part 22 because substantial changes in technology have rendered them outdated or unnecessary; and (4) because stating Part 22 heights and distances in rounded metric units in accordance with the Metric Conversion Act of 1976 could result in small but substantive changes that require public consideration in a notice and comment rule making proceeding.[4]

3. Numerous parties (listed in Appendix D) filed comments[5] and replies in response to the *Notice*. Generally, the parties support the Commission's efforts to revise Part 22, and they either agree with the proposed rules or offer alternative proposals.[6] As explained in more detail *infra*, some of the rules we are adopting have been modified from those proposed in order to address concerns of the parties or to better serve the public interest. Also, we found that additional notice and comment were desirable with respect to some of the proposals made in the comments. On May 20, 1994, we released a *Further Notice of Proposed Rule Making*, (*Further Notice*) seeking comments on those matters.[7] In addition, we have consolidated into this proceeding the rule making proceedings in CC Dockets No. 94-46 and 93-116 which have proposed certain technical amendments to Part 22.

4. In the *Notice*, we proposed changes to almost every rule in Part 22. We address our action with respect to these changes to each rule section in the attached Appendix A. Although we dispose of most matters with only a brief mention, our decisions are based on careful consideration of the comments and arguments in the record. We also proposed in the *Notice* significant changes to our procedures for authorization of service and in the way we regulate the Public Mobile Services. In addition, several of our other proposals attracted significant comment. We address these major issues in greater detail below.

MAJOR ISSUES

Application Processing Procedures

5. **Proposals.** Traditionally, to select from among mutually exclusive applicants for initial or modified facilities in the Public Mobile Services, we have used random selection. Under this procedure, if the selected application satisfies the requirements of our Rules, it is granted and the other applications are dismissed.[8] In the *Notice*, we proposed to process applications in the Public Mobile Services using a "first-come, first-served" procedure.[9] Under the proposal, the first-filed application would be granted unless other mutually exclusive applications were filed on the same day. Later-filed mutually exclusive applications would be dismissed. If two or more of the mutually exclusive applications were filed on the same day, we would conduct a random selection process. We noted that if we adopted this procedure, we would eliminate the 60-day filing period currently allowed for the filing of competitive applications[10] and might avoid most lottery situations. We felt that the first-come, first-served procedure would also expedite the processing of applications, and discourage applicants from filing applications simply to delay action on a competitor's applications.

6. After the *Notice* was released, Congress added a new Section 309(j) to the Communications Act of 1934, as amended, which authorizes the Commission to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for initial licenses.[11] On March 8, 1994, we implemented this authority by adopting rules to use auctions to choose from among two or more mutually exclusive initial applications in numerous radio services, including most of the Public Mobile Services, in the *Second Report and Order in*

[3] For example, in the cellular radio service, almost all of the 306 Metropolitan Statistical Areas (MSAs) and New England County Metropolitan Areas for the New England States (NECMAs) and most of the 428 Rural Service Areas (RSAs) have been licensed to provide service. This near completion of our initial cellular licensing process has rendered many of our initial cellular licensing rules obsolete.

[4] In *Metric Conversion of the Commission's Rules*, 8 FCC Rcd 3720 (1993), the Commission completed the conversion of most of its Rules, including Part 22, to the metric system of measurement.

[5] Comments were originally due on August 21, 1992. On August 7, 1992, Telocator and Cellular Telecommunications Industry Association (CTIA) requested an extension of time to file comments. The parties explained that the comprehensive scope and complexity of the Commission's proposed action made advisable an open Joint Industry Forum (Forum) on Part 22. On August 13, 1992, the Common Carrier Bureau extended the deadline for filing comments to October 5, 1992. *See Order*, 7 FCC Rcd 5319 (Com. Car. Bur. 1992). The Forum was held on September 18, 1992.

[6] We have analyzed all of the arguments contained in the comments before resolving this rule making proceeding. Not all of the points raised in the comments, however, are discussed in this Order for reasons of brevity.

[7] Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115, Further Notice of Proposed Rule Making, 9 FCC Rcd 2596 (1994).

[8] Pursuant to old Section 22.33(c) of the Rules, a licensee applying for expansion of an existing system may request that its application and those that are mutually exclusive with it be designated for a comparative hearing.

[9] The *Notice* indicated that the "first-come, first-served" procedure would be used to resolve mutually exclusive situations. Actually, the procedure we envisioned was a one-day cut-off procedure for accepting applications. Thus, if application "X" was filed on a given day and no applications that were mutually exclusive were filed on that day or were already pending, then application "X" would be granted, assuming it had no fatal defect.

[10] Under the first-come, first-served proposal, as under the current system, the Commission could not grant major filings until 30 days after public notice of their acceptance, allowing ample opportunity for parties with standing to file petitions to deny. Section 309(b) of the Communications Act of 1934, as amended (47 U.S.C. § 309(b)) requires public notice and a 30-day period before the Commission may grant certain applications.

[11] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312.

PP Docket No. 93-253 (*Second Report*).[12] Nevertheless, in the *Second Report*, we determined that we would not conduct auctions to resolve mutual exclusivity between initial Basic Exchange Telephone Radio Service (BETRS) or rural radio applications and common carrier mobile service applications.[13] The *Second Report* also concluded that renewal and modification applications generally should not be subject to competitive bidding procedures.[14] In the *Further Notice* in this proceeding, we proposed *inter alia* to use competitive bidding procedures to award 931 MHz paging station authorizations for which mutually exclusive applications have been filed.

7. **Comments.** Most of the comments in response to the *Notice* oppose the first-come, first-served proposal. Radiophone questions whether the Commission has the statutory authority to adopt this licensing procedure. Citing *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945), it argues that the procedure appears to unreasonably restrict the statutory right to file a competing application.[15] Many of the parties predict that use of the proposed first-come, first-served licensing process would impede the development of wide area systems,[16] increase incentives for speculation and abuse by so-called "application mills"[17] and encourage licensees to file petitions to deny and other pleadings that could embroil the Commission in legal disputes.[18] The parties further allege that use of the proposed procedure would upset existing carriers' carefully planned expansion strategies by forcing them to apply immediately for facilities in areas they might want to serve in the future, rather than allowing them to apply at a later time when sound business reasons justify the expansion costs.[19] Further, several of the commenters claim that adoption of the proposed first-come, first-served procedure would adversely impact small businesses that do not possess the capital to expand immediately.[20]

8. As a modification to the proposed first-come, first-served licensing procedure, several parties recommend that we include mutually exclusive applications to expand existing systems in a random selection process with a first-filed application, rather than dismissing them. Specifically, these commenters suggest that applications be included in a random selection process if they are filed within 60 days after public notice of the first-filed application by licensees of co-channel facilities located within 250 kilometers (140 miles) of facilities requested in the first-filed application.[21] Several other parties suggest that we should retain the comparative hearing process as an option for any mutually exclusive applications filed by the licensees of existing co-channel facilities.[22] This compromise, they argue, would expedite the Commission's licensing process while, at the same time, reducing the negative impact on existing licensees.

9. As an alternative to first come, first served licensing, several parties suggest that the Commission adopt a market area licensing procedure (similar to that used for cellular systems) for stations in the Paging and Radiotelephone Service, instead of continuing to license paging systems on a transmitter-by-transmitter basis. These parties contend that using a market area approach would expedite the licensing process, reduce regulatory delays and encourage wide-area service.[23] They argue that market area licensing would achieve substantial administrative savings through economies of scale, reflect the realities of the marketplace, and be responsive to the needs of the public. A market area procedure, they note, would also be consistent with the Commission's approach to licensing the Personal Communications Services.[24]

10. OASBA expresses concern that the proposed combination of first come, first served and random selection procedures would encourage application mills to file numerous applications for facilities near existing systems, with the intention of seeking a buyout from those systems. OASBA suggests that we adopt a prohibition on resale or other changes

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[12] *See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348 (1994).

[13] *Id.*, at paragraph 46. We also observed that because local exchange carriers generally operate under exclusive franchises, we did not anticipate mutual exclusivity between BETRS applicants. *See Second Report* at n.35. The Rural Radio Service, including BETRS, is a fixed service regulated under Subpart H of Part 22 of our current Rules.

[14] *Id.* at paragraph 39.

[15] Radiophone Comments at 2-3.

[16] *See, e.g.*, Southwestern Bell Corp. (Southwestern Bell) Comments at 13; ALLTEL Mobile Communications, Inc. (ALLTEL) Comments at 2; McCaw Cellular Communications, Inc. (McCaw) Comments at 26; Metrocall of Delaware, Inc. (Metrocall) Comments at 7.

[17] *See* Office of Advocacy of the Small Business Administration (OASBA) Comments at 9; NYNEX Mobile Communications Company (NYNEX) Comments at 3.

[18] *See* Comments filed on behalf of Pactel Paging and 20 other Part 22 licensees (collectively referred to as the Joint Commenters) at 21.

[19] Telocator Comments at 6.

[20] Telocator Comments at 7; Metrocall Comments at 8; Radiophone Comments at 4.

[21] *See, e.g.*, BellSouth Corp. and BellSouth Enterprises, Inc. (BellSouth) Comments at 3; Southwestern Bell Comments at 14.

[22] *See e.g.*, Radiophone Comments at 5-6; Telocator Comments at 9; OASBA Comments at 12.

[23] *See, e.g.* Telocator Comments at 8 and Reply Comments at 2-3; Paging Network, Inc. Comments at 5-10; OASBA Comments at 12.

[24] *See, e.g.*, Amendment of the Commission's Rules to Establish New Personal Communications Services, GN Docket No. 90-314, Second Report and Order, 8 FCC Rcd 7700 (1993); *modified*, Memorandum Opinion and Order, FCC 94-144, released June 13, 1994; *further recon. pending.*

in the ownership of licensed facilities for a set period of time. In addition, they argue, we should require that licensees commence construction of their systems within a specified period of time.[25] OASBA asserts that adoption of these provisions would deter application mills because their customers would have little hope of a quick pay off if they win the lottery.

11. **Discussion.** Initially, we note that we believe the commenters' suggestion that we use market area licensing procedures may be feasible, at least for 931 MHz paging stations. It is not clear, however, whether a market area procedure would be workable for other Paging and Radiotelephone Service stations. Furthermore, we conclude that any decision to use a market area licensing approach would be more appropriately considered in a proceeding encompassing not only affected Part 22 systems, but also any other substantially similar commercial mobile radio systems. That is beyond the scope of this proceeding, which addresses Part 22 only.

12. Our objective in proposing first-come, first-served application processing was to expedite authorization of service in the Public Mobile Services. We thought that the proposed procedure would minimize the filing of mutually exclusive applications for initial or modified facilities and virtually eliminate the need to use random selection to choose among mutually exclusive applications. Nevertheless, upon further consideration we now conclude that the first-come, first-served procedure could have negative effects upon our processing procedures and the logical development of the Paging and Radiotelephone Service. The first-come, first-served procedure could encourage licensees to file for channels before they really need them in an attempt to preempt their competitors, increase incentives for speculation and abuse by "application mills," impede the development of wide area systems, and make it difficult for small businesses to compete effectively because those businesses frequently lack the capital to expand their systems immediately. *See* the arguments summarized in paragraph 7, *supra*. In this light, we conclude that we should have a filing period sufficiently long to allow serious and qualified potential competitors to file and be considered. We believe that a 30-day cut-off period is sufficient to allow all qualified applicants to file. Further, given our new authority to conduct auctions, it would appear that auctions would provide the most efficient way to determine which of several mutually exclusive applicants should prevail. Thus, the party that most highly values the spectrum would acquire that spectrum in a competitive bidding situation.[26]

13. On May 20, 1994, we released a *Further Notice of Proposed Rule Making* in GN Docket No. 93-252 (*Transition Notice*),[27] in which we proposed to adopt licensing procedures similar to those utilized in Part 22 of our Rules for those formerly private radio services which had been reclassified as "commercial mobile" radio services (CMRS) in the *Second Report and Order* in GN Docket No. 93-252.[28] In the *Transition Notice*, we tentatively concluded that competitive bidding procedures (auctions) should generally be used to pick the winner among mutually exclusive CMRS applications in Part 90 services subject to reclassification as well as Part 22 CMRS applications where we have the authority to do so.[29] We also tentatively concluded that initial applicants and certain major modification applications in Part 22 services (except cellular unserved area Phase I applications) as well as CMRS applications in Part 90 services subject to reclassification should be subject to 30-day filing windows in which competing applications may be filed.[30]

14. Under existing licensing procedures for Public Mobile Services other than cellular radio, such as paging, however, we have historically required carriers to apply for authority to operate each individual transmitter in a station, and, with certain exceptions, the Public Mobile Services authorizations we issue do not confer geographic exclusivity on the licensee beyond the station's actual reliable service area. Consequently, for these services it is not clear which types of mutually exclusive applications should be considered initial applications, and thus subject to competitive bidding procedures.

15. In the *Further Notice* in this docket, we proposed to subject 931 MHz paging applications to a 30-day filing window and to classify applications for 931 MHz paging stations as initial or modification applications for the purpose of determining whether competitive bidding procedures could be used. Specifically, we proposed that 931 MHz applications be considered applications for an initial authorization if they request a new facility, a new channel for an existing facility, or a new or relocated transmitter site more than 2 kilometers (1.2 miles) from an existing site of the same station on the same channel. In the *Transition Notice*, we proposed to apply the foregoing test to all commercial mobile radio services, including all Part 22 services.[31] Since the *Further Notice* in this docket

[25] OASBA Comments at 10-11.

[26] We are mindful of our obligation under Section 309(j)(6) of the Act, 47 U.S.C. § 309(j)(6)(e), to "continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in our application and licensing proceedings," and we will do so.

[27] Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Further Notice of Proposed Rule Making, FCC 94-100, released May 20, 1994.

[28] Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994); erratum, Mimeo No. 92486 (released March 30, 1994).

[29] *Transition Notice* at 53-54.

[30] *Id.* at 55.

[31] *Id.* at 58-59.

concerns only 931 MHz paging applications, whereas the *Transition Notice* concerns all applications in the CMRS, including all Part 22 services, except for the Rural Radiotelephone Service (including BETRS) which is a fixed service,[32] we shall adopt appropriate processing and licensing rules for Part 22 CMRS services other than 931 MHz paging pursuant to the *Transition Notice* in the *Report and Order* concluding that proceeding. Thus, the rules we adopt in this docket relate solely to 931 MHz paging and Rural Radiotelephone Service (including BETRS) applications.

16. In view of the foregoing considerations, and after consideration of the comments in this proceeding and the effect of the recent amendments to the Act on our proposal, we are adopting a new rule to govern the processing of 931 MHz applications.[33] The new rule provides generally that (1) initial applications will be subject to a 30-day filing window for competing applications,[34] and (2) competitive bidding procedures will be used for processing filing groups comprised entirely of mutually exclusive applications for initial authorizations filed during the 30-day window.[35] In the new rule, we define the term "application for initial authorization" as we proposed, to include any application for a new station, any application for an additional channel and any application to relocate a transmitter more than 2 kilometers (1.2 miles) from all authorized transmitters of the applicant licensee on the requested channel.

17. Modification applications that are not mutually exclusive with any application filed on the same or on a previous day will be accepted for filing and granted on a first-come, first-served basis.[36] Under the first-come, first-served procedure, mutually exclusive modification applications received on the same day will be given comparative consideration. Consistent with the Omnibus Budget Reconciliation Act, such applications will be designated for comparative hearing to determine which modification application should be granted, unless the parties negotiate a legal settlement on this issue. *See* paragraph 102, *infra*. Further, a filing group comprised of at least one modification application as defined by Section 22.541 of our Rules and at least one initial application will, absent a settlement, be designated for comparative hearing because the Omnibus Budget Reconciliation Act does not allow the use of auctions to determine whether a modification application should be granted.

18. We shall also adopt first-come, first-served filing procedures for the Rural Radiotelephone Service, including BETRS. We do this for two reasons. First, the only procedures for processing Rural Radiotelephone Service (including BETRS) applications that have been properly noticed in this proceeding are the first-come, first-served procedures. *See* new Section 22.717 of our Rules. Second, we believe that these procedures are suitable for this service. It is very unusual for a rural radio application to be mutually exclusive with any other application, even though applicants in the Rural Radiotelephone Service and the Paging and Radiotelephone Service can file for many of the same channels. Further, we do not anticipate mutual exclusivity between BETRS applicants because local exchange carriers generally operate under exclusive franchises. See note 12 at page 5, *supra*. The first-come, first-served procedures would allow an application to be granted if it is not mutually exclusive with another application filed on the same or on a previous day and if the applicant in question is qualified to be a Commission licensee. Further, under these procedures, mutually exclusive applications received on the same day would, absent a negotiated settlement among the parties, be designated for a comparative hearing to determine which application should be granted. Lastly, if a rural radio application is filed during a filing period which commenced with the issuance of a public notice that an application for the Paging and Radiotelephone Service had been filed, then all applications filed during this period would, absent a negotiated settlement among the parties, be designated for a comparative hearing to determine which application should be granted.

19. We will no longer allow licensees whose applications for expansion of their existing systems are mutually exclusive to request that a comparative hearing be held.[37] Contrary to the view expressed by some of the parties, we have not determined that regional and wide-area paging services always serve the public interest better than local paging services. Thus, even if we were to retain the option of requesting a comparative hearing, we have no basis for concluding that system expansion applications would necessarily prevail in a comparative hearing over applications for new stations.[38] Moreover, the record of this proceeding does not demonstrate that the public interest would be better served by awarding licenses by comparative hearings rather than the type of procedures we adopt today. Although we have provided spectrum for and encouraged the establishment of regional and national paging networks, both in

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[32] In the *Second Report and Order in GN Docket No. 93-252, supra*, we stated that the Rural Radio Service, which includes BETRS, is a fixed service and is not affected by the proceeding in GN Docket No. 93-252, 9 FCC Rcd at 1456. That docket deals with defining the Commercial Mobile Radio Service (CMRS) and rules pertaining thereto.

[33] *See* new Section 22.541 in Appendix B.

[34] This is similar to the current "notice and cut-off" procedure, except that 30 days will be allowed for filing competing applications rather than 60 days.

[35] If one of a group of mutually exclusive applications is a timely application for renewal of an expiring authorization, special rules for contested renewal proceedings will be used (generally involving comparative hearings).

[36] Our new rules do not use the term "first-come, first served." Rather, applications processed pursuant to first-come, first-served procedures are defined as being members of a "same day filing group."

[37] This option is currently available pursuant to Section 22.33(c) of our Rules.

[38] No applications have ever been designated for a hearing under Section 22.33(c) of our Rules.

the Public Mobile Services and more recently in the private radio services, our position remains that the marketplace should determine the proper mix of wide-area and local paging service. Our new competitive bidding procedures will ensure that authorizations will be issued to the applicant that places the highest value on the spectrum rather than whether the applicant seeks expansion of an existing system or establishment of a new station.

Finders' Applications

20. **Proposal.** The *Notice* proposed to provide an incentive for identifying unused spectrum by enabling applicants to file "finders' applications" requesting licensing of channels that have been assigned, but are unused.[39] Although such an application would ordinarily be considered defective for failing to meet the technical protection requirements with respect to the existing assignment, under the proposed rules it would be accepted for filing pending the outcome of a staff investigation to determine whether the station was never constructed or had been abandoned. In the *Notice*, we proposed specific information that a finder's application would include. Under this proposal, if our investigation revealed that the authorization assigning the requested channel had in fact automatically terminated, we could recover and reassign the affected channel. The finder's application submitted by the applicant would then be either the sole or the first-filed initial application for the recovered channel.

21. **Discussion.** We defer any decision on the finders' applications proposal at this time because we need to examine the proposal in more detail pursuant to a future Notice of Proposed Rule Making for all Commercial Mobile Radio Services, including Part 90 reclassified services. Currently, finders' preferences are available under Part 90. In the *Transition Notice* in GN Docket No. 93-252, we proposed to use the same filing and processing rules for all substantially similar CMRS applications in both Part 22 and Part 90. We will evaluate the function of finders' preferences in light of our decision in that docket.

Relaxation of Notification Requirements

22. **Proposals**. In the *Notice*, we proposed to remove the requirement that licensees notify the Commission when they make "permissive" minor modifications to their stations or add new "internal" transmitters to existing systems.[40] We believe that most of the notifications filed simply to satisfy this requirement are unnecessary because the information is not needed by the Commission staff, other licensees or the public. Adoption of this proposal would reduce the number of notifications filed and thus conserve Commission and industry resources. We noted however, that, because there would not be any public record of modifications made or transmitters added without subsequent notification, either in the station files or computer data bases, those modifications or additional transmitters would not be directly protected from interference.

23. **Comments.** Telocator recommends four revisions to our proposal to eliminate our notification requirements: (1) establish a five-mile "buffer zone" around the CGSA of each cellular system at the expiration of its five year build-out period and allow carriers to make modifications within the buffer zone without prior approval, provided that no extensions into adjacent markets result;[41] (2) clarify that cellular carriers may modify transmitters "within the core of their systems" without notifying the Commission; (3) require cellular carriers to notify the Commission after modifying cells that constitute a portion of their system's CGSA boundary; and (4) specify that interference protection will be afforded to facilities operating within the aggregate contour of a cellular system.[42] McCaw Cellular Communications, Inc. (McCaw) agrees that cellular licensees should be required to notify the Commission of minor changes to cells constituting the CGSA boundary, so that licensees of adjacent cellular systems will be able to assess interference potential correctly when designing their own systems.[43] Comp Comm, Inc. (Comp Comm) requests that we require licensees to file engineering information whenever any technical changes are made to a perimeter cell of a cellular system.[44] McCaw and PacTel Cellular (PacTel) also argue that notification should be required for new cell sites that affect the CGSA boundary. Further, they recommend that cellular licensees be required to notify the Commission if formerly internal cell sites (for which no notification was originally submitted) become a part of the CGSA boundary, due to discontinuance of other cells.[45]

24. Metrocall of Delaware, Inc. (Metrocall) suggests that we incorporate a general principle that notification is required for any minor change that would require a change in our computer database.[46] MetroCall argues that licensees should be allowed to notify the Commission in order to obtain interference protection for a modified facility.[47] PacTel suggests that licensees should be allowed to file notifications once each year on a consolidated basis for each system in order to obtain

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[39] This concept was originally suggested to the Commission in 1988 and 1989 by the Special Industrial Radio Service Association, Inc., and the National Association of Business and Educational Radio, Inc. It is codified in Section 90.173(k) of our Rules governing the Private Radio Services.

[40] *See* new Sections 22.163 and 22.165.

[41] *See also* PacTel Cellular (Pactel) Reply Comments at 5.

[42] Telocator Comments at 50-51.

[43] McCaw Comments at 34-35.

[44] Comp Comm Comments at 37-38.

[45] McCaw Comments at 34-35; PacTel Reply Comments at 4.

[46] Metrocall Comments at 30.

[47] *Id.*

interference protection for modified facilities.[48] Joint Commenters recommend that the proposed rule be revised to provide that licensees are not required to file applications or notifications reflecting system changes that do not alter the service contour by more than two kilometers in any direction.[49] Joint Commenters suggest that we locate proposed Section 22.123 (classification of filings under Section 309 of the Act) closer in the rules to proposed Section 22.163 (minor modifications not needing prior Commission approval) or combine the two, because they are related.[50] Joint Commenters also suggest limiting the encompassment criterion for Paging and Radiotelephone Service stations to interfering contours, rather than both service and interfering contours.

25. **Discussion.** We adopt new Sections 22.163 and 22.165 essentially as proposed. For reasons discussed below, however, we accept the suggestion made by many of the commenters and retain the notification requirement for the addition or modification (under these new rule sections) of cell sites that form a CGSA boundary in order that licensees of adjacent cellular systems will be able to assess interference potential correctly when designing or modifying their systems. We note that generally the record supports eliminating the notification requirement for most additions and modifications and that our doing so will save substantial industry and Commission resources.

26. Many commenters are concerned that facilities for which no notification was submitted[51] would not receive direct protection from interference. This means, for instance, that we would not dismiss an application (*e.g.* pursuant to a petition to dismiss or deny) solely on the grounds that the application does not include an interference study for an existing facility if there is no current FCC public record of that facility. In such a case, the applicant would have had no way of knowing the current technical parameters of that facility (or perhaps even that it exists).[52] As a practical matter, we believe that facilities added or modified without prior approval or subsequent notification under these new sections will not receive interference because they will be indirectly protected by the presence of surrounding stations of the same licensee on the same channel or channel block.[53] We also note that the new rules we are adopting do not prohibit licensees from filing notifications. Thus, if a licensee desires that a new transmitter or other modification appear in the Commission's public records and thus be directly protected from interference, it can notify the Commission of that new transmitter or modification by filing FCC Form 489.

27. We see no public benefit that would result from adopting Telocator's recommendation to establish a "buffer zone" around cellular system CGSAs. Doing so would frustrate the purposes of our rules that establish a five year build-out period and provide for the filing of unserved area applications. In effect, this proposal would allow carriers to expand their CGSAs by modifying facilities after their exclusive right to expand within the market had ended. Therefore, we reject this suggestion. We likewise reject Telocator's second recommendation, because the rule as proposed allows cellular carriers to make modifications anywhere (not just in the "core" of the systems) *provided that* an application requesting the modifications would be classified as minor under new Section 22.123.[54] On the other hand, consistent with Telocator's third recommendation, the rules we are adopting today will continue the current requirement that cellular licensees notify us if they change or replace the cells that constitute a portion of their systems' CGSA boundaries. Further, as proposed in the *Further Notice*, we are requiring all cellular licensees to submit specific information for each of their external cell sites as a one time filing that will assist the staff in updating the Commission's database of cellular systems. See paragraph 87, *infra*.

28. We reject Joint Commenters' suggestion concerning changes that alter the service contour by less than 2 kilometers, because applications for such changes would not be classified as minor (see discussion of new Section 22.123 in Appendix A). In addition, while we agree that new Sections 22.123 and 22.163 are related, we are keeping them separate because they address two different purposes: the former explains the basis for classifying applications and amendments, and the latter allows licensees to make minor changes to existing facilities without seeking or obtaining prior approval. We cannot adopt Joint Commenters' suggestion that paragraphs (d) and (g) of Section 22.165 be concerned only with interfering contours rather than both service and interfering contours, because our *Notice* did not propose to base those paragraphs only on interfering contours and we do not have a sufficient record on this issue. The idea may have some merit, however, and we may propose it in a further notice at some future point. In view of our adoption of fixed distance technical channel assignment criteria for BETRS transmitters (new Section 22.759) and the fact that BETRS transmitters do not operate in a simulcast mode, we have added a sentence to paragraph (g) indicating that

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[48] PacTel Comments at 4.

[49] Joint Commenters Comments at 36-37.

[50] *Id.* at 65.

[51] *See* new Section 22.352(b)(6).

[52] The rules requiring interference studies, new Sections 22.559 and 22.589, refer to "protected" transmitters. We reworded Sections 22.537(b) and 22.567(b) to clarify that there must be a current public record of transmitters in order for them to be considered protected.

[53] This assumes, of course, that the surrounding stations are correctly represented in FCC public records.

[54] *See* Appendix A at 11-14 for a discussion of this rule.

this section does not apply to BETRS.

Definition of "Service to Subscribers "

29. **Proposal.** Currently, our rules require that Public Mobile Services stations must be constructed and ready for operation prior to the end of the construction period, that licensees must file a notification form when construction is completed, and that service to the public *may* commence upon filing of that notification.[55] In the *Notice*, we proposed that stations ***must actually commence providing service to the public*** by the end of the construction period.[56] Failure to provide service by the date of required commencement of service would automatically terminate the authorization without any further notice or other action by the Commission. The proposal would require that licensees notify the Commission of commencement of service to the public (as opposed to merely completion of construction and readiness for operation) by filing a notification (FCC Form 489) not later than 15 days after service to the public begins. We stated in the *Notice* that the proposed rule is intended to encourage licensees to provide service to the public as expeditiously as possible.

30. **Comments.** Many of the commenters argue that the Commission's definition of "service to the public" would play a significant role in the new Part 22 rules[57] and that further clarification of that phrase is needed. They disagree, however, on the appropriate definitions for the term. For example, Telocator argues that service to the public should entail only the construction and installation of functioning equipment that could be used to provide such service. Telocator states that this would include a transmitter, antenna, transmission line, and a terminal that is connected to the transmitter and the public telephone network.[58] Pacific and Nevada Bell suggest that "service to the public" should be defined as to require systems to have a specified minimum number of non-affiliated, revenue-producing customers.[59] McCaw recommends that the Commission include a definition of "service to the public" in proposed Section 22.99. It suggests that this term be defined as construction of a paging or conventional two-way system that is interconnected to the landline network and capable of providing paging and/or radiotelephone service.[60]

31. **Discussion.** First, we are maintaining the current requirement that Public Mobile Services stations must be constructed by the end of the applicable construction period. By "constructed," we mean the completion of the construction, installation, and testing of a functioning station that is interconnected with the public switched telephone network. We emphasize that to meet this requirement, licensees must actually be able to transmit from a constructed facility; reselling a competing carrier's service will not satisfy the construction requirement.[61] This requirement furthers our public interest goal of promoting facilities-based competition in the Public Mobile Services.

32. We are also adopting, as proposed, the new requirement that Public Mobile Services stations must commence service to the public by the end of the construction period. This additional requirement will discourage a licensee from obtaining an authorization, and perhaps even constructing facilities, but not using them to offer service to the public.[62] Over the years, licensees have applied for channels that were not needed immediately in order to "warehouse" them; *i.e.*, have them available for future use, while depriving any competitors of their present use. This practice clearly results in an inefficient utilization of the spectrum. We believe that our new requirement will effectively discourage such "warehousing" of channels.

33. We have determined that in order to be considered as providing service to the public, a system must be providing service to at least one subscriber who is not affiliated or controlled by the licensee or in any other manner related to the licensee. Further, we shall define the foregoing service as "service to subscribers" in order to avoid confusion with the term "service to the public" that is used with respect to the Commercial Mobile Radio Service (CMRS). We have also included a definition of "service to subscribers" in Section 22.99 of the new Rules we adopt today. This term plays an integral role in new rule Sections 22.142, 22.144(b) and 22.121(d). We believe that this definition is consistent with the Act, which requires that a Commission license for all uses of radio, including use for common carrier purposes, can be obtained only upon a showing that the "public interest, convenience and necessity" will be served, 47 U.S.C. §§ 301, 307-310. In determining the showing to be made, the Commission can properly consider that the "public interest" demands that those who are entrusted with the available channels shall make the

[55] *See* old Sections 22.9 and 22.43.

[56] The end of the construction period, which is printed on all Public Mobile Services authorizations as the "date of required completion of construction," would be called the "date of required commencement of service."

[57] *See* proposed Sections 22.142, 22.144(b), 22.121(d), 22.167, and 22.507(a).

[58] Telocator Comments at 17.

[59] Pacific Bell and Nevada Bell Comments at 5.

[60] McCaw Comments at 12-13.

[61] *See, e.g., Delray Cellular Associates*, 4 FCC Rcd 2233 (Mobile Serv. Div. 1989).

[62] Currently, if a licensee does not construct a facility, the authorization for that facility automatically terminates. If a licensee does construct the facility, but overlooks notifying the Commission that construction has been completed, that licensee will generally receive a notification of apparent liability for a forfeiture (a monetary fine). Under the new rule, if a licensee does not provide service to subscribers (as we define them herein), the authorization will automatically terminate. The penalty for failing to file a required form will not change.

fullest and most effective use of them.[63]

Conditional Licensing

34. **Proposal.** We proposed in the *Notice* to rely on the technical exhibits provided by applicants in the Paging and Radiotelephone Service and Rural Radio Service without verifying their accuracy prior to grant. We proposed that instead of verifying these technical exhibits, we would grant authorizations subject to the condition, throughout the license term, that the licensee would not be allowed to continue to operate if such operation caused interference to other licensed facilities as a result of errors or omissions in the technical exhibits submitted with the application. Specifically, if interference were to occur because of an error or omission in the technical exhibits to the application, the Commission could order the licensee to suspend operation of the facilities at the locations causing the interference, without affording an opportunity for a hearing, until such time that the facility is modified to resolve the interference. We pointed out that while applicants are currently required to certify that the statements made in the application, including the technical exhibits, are complete, we proposed to strengthen this certification to provide that the applicant has carefully reviewed the engineering of its proposal and certifies that it complies with the Commission's technical rules for operation on an interference-free basis. We also requested comment as to whether the condition should remain in effect throughout the license term.

35. **Comments.** The commenters generally opposed this proposal. Some of the parties are concerned that the license condition would be invoked in response to many different types of interference. Other commenters argue that our proposal to grant authorizations conditionally for the entire license term would (1) adversely affect the provision of service to the public;[64] (2) create uncertainty with respect to the validity of authorizations;[65] and (3) make it more difficult to finance and sell facilities.[66] Joyce and Jacobs, Radiophone, and Southwestern Bell contend that the proposal would deprive applicants of the statutory and other protections normally afforded them.[67] Finally, they contend that the conditional licensing proposal is unclear as to what procedures the Commission will follow when it receives a complaint of interference, *i.e.*, whether the Commission would initiate a preliminary investigation after receiving such a complaint.

36. Several commenters, such as Telocator, Southwestern Bell, Radiophone, and SMR Systems, Inc. (SSI), recommend that if the Commission adopts this proposal, we should limit the conditional license period to one year from the date of commencement of service. Radiophone argues that any interference that would arise should become apparent during the first 12 months of operation.[68] Moreover, Telocator asserts that the 12-month period would afford affected co-channel licensees three opportunities to question another licensee's operation: (1) upon notice of the application as acceptable for filing; (2) upon notice of the grant of the application; and (3) upon notice of commencement of operation of the facilities.[69] SNET Paging, Inc. (SNET) concludes that limiting the length of the conditional license period avoids the drawbacks of this proposal while promoting the Commission's objectives.[70]

37. **Discussion.** After having considered our proposal and the arguments advanced in the comments, we have decided not to adopt our conditional licensing proposal. We agree with the commenters that the conditional grant proposal would create uncertainty with respect to the validity of authorizations and also could make efforts to finance or sell facilities more difficult than is currently the case. Moreover, it is possible that the resources that would be required to enforce our conditional grant proposal could exceed the savings realized by not reviewing the technical exhibits in the first place. In brief, "unscrambling the egg" could be a very difficult, if not impossible, process if an applicant commences operation of a facility and interference problems develop that could have been foreseen if an engineering review of the technical exhibits in the application had been conducted. Thus, we will continue to verify the accuracy of technical engineering exhibits submitted with applications.

Electronic Filings

38. Section 1.743 of our Rules requires all common carrier applications to be "personally" signed by the applicant or, in certain circumstances, by the applicant's attorney. Thus, a handwritten signature is currently required for all common carrier applications. In October 1992, after release of the *Notice* in this proceeding, Congress amended the Communications Act to allow electronic filing of applications.[71] Specifically, Sections 308(b) and 319(a) of the Act were amended to allow applications to be signed "in any manner or

[63] *See Microwave Service to CATV Systems*, 1 FCC 2d 897 (1965) (the Commission interpreted Section 301 of the Act to require carriers to show public need or that at least 50 percent of the proposed usage in the public point-to-point service is to serve members of the public that are not related to the applicant. *Id.*, at 902-904). *See also* Section 21.700(c).

[64] Telocator Comments at 10.

[65] BellSouth Comments at 4-5; U S WEST NewVector Group, Inc. (NewVector) Comments at 5-6.

[66] PageNet Comments at 38-39; Telocator Comments at 11; Joint Commenters Comments at 27; SMR Systems, Inc. (SSI) Comments at 6.

[67] Radiophone Comments at 6-10; Southwestern Bell Comments at 14-15; Joyce and Jacobs Comments at 3-4.

[68] Radiophone Comments at 8-9.

[69] Telocator Comments at 11.

[70] SNET Paging, Inc. (SNET) Comments at 11-12.

[71] Telecommunications Authorization Act of 1992, Pub. L. No. 102-538, 106 Stat. 3533 (1992), Section 204.

form, including by electronic means, as the Commission may prescribe by regulation." *Id.*, §§ 204(b), (c). A conforming amendment was also added to eliminate the requirement of a "signed" waiver under Section 304 of the Act. *Id.*, § 204(a).

39. Pursuant to the authority expressly delegated by Congress, we have decided to modify the handwritten signature requirement as it applies to common carrier applications. Specifically, we amend Section 1.743(a) to delete the word "personally" from the application signature requirement. Further, the signature requirement is amended to give the Common Carrier Bureau discretion to establish filing procedures by public notice (to be published in the Federal Register) that would allow applications to be "signed" by computer-generated impulses. Modification of the handwritten signature requirement will allow us to move towards more efficient processing of common carrier applications. Our ultimate goal is to eliminate, to the extent possible, the filing of paper applications. Electronic filing will expedite the licensing process by eliminating the need for manual entry of application data into the Commission's data base. We also hope to develop the means to generate and transmit license information to licensees electronically with no intermediate paper documents.

40. We emphasize that under new Section 1.743 of the Rules, handwritten signatures will continue to be required on all common carrier applications unless and until the Common Carrier Bureau establishes specific procedures for electronic filing of such applications. Such procedures will be implemented by publication of Public Notices in the *Federal Register*, and the use of modified application forms.

41. The foregoing revisions to Section 1.743 of the rules relate to matters of practice and procedure only. Therefore, they are excepted from the notice and comment requirement of the Administrative Procedure Act, 5 U.S.C. § 553(a).

Multichannel Transmitters

42. **Proposal.** In the *Notice*, we proposed to require a separate transmitter for every assigned channel at each location. We stated that the proposed rule was intended to eliminate the practice whereby one multi-channel transmitter (MCT) is installed at a site where two or more channels are authorized. Because the MCT can transmit on only one channel at a time, all but one of the assigned channels at that site are unused at all times. Our rules concerning the assignment of additional channels are based on the assumption that all assigned channels could and would be used simultaneously. We stated our tentative view in the *Notice* that the use of MCTs to satisfy construction requirements constitutes inefficient use of the spectrum. We also stated that our proposal to require a separate dedicated transmitter for each assigned channel would discourage warehousing. We requested comments, however, as to whether there is a less stringent requirement that would also meet this objective. Finally, we proposed to require that all transmitters within a station must be operationally related in order to be authorized together as a station.

43. **Comments.** The commenters oppose the proposal to require a separate transmitter for every assigned channel at each location.[72] They argue that the Commission's rules should expressly allow licensees to use MCTs at sites with more than one assigned channel provided that they satisfy the construction and service requirements. They argue that the legitimate uses for MCTs include (1) facilitating the introduction of additional public mobile services, such as nationwide paging;[73] (2) enhancing the variety of services offered, such as voice or text paging;[74] and (3) facilitating the sharing of channels under time-sharing agreements.[75] OASBA believes that these useful functions represent an effective mechanism for small paging systems to increase coverage, reduce inefficient use of transmitters, and lower costs to subscribers. McCaw avers that the cost to provide service using a second channel when incorporated into a MCT is significantly lower than if separate transmitters are used, thus benefitting the public interest.[76] Furthermore, McCaw argues that a prohibition against MCTs would not deter warehousing because any carrier wishing to warehouse can easily supply a single inexpensive low power transmitter to maintain traffic on the channel and thereby preclude other carriers from filing for that channel. In any event, SNET argues that the Commission's proposed rules regarding settlements, first come, first served, and repetitious filings serve best to deter warehousing.[77] Finally, Telocator contends that adoption of the proposal would further aggravate the asymmetrical regulation between private carriers, which are not restricted as to the type of transmitters they use, and Part 22 common carriers.[78]

44. **Discussion.** We have been persuaded by the commenters to alter our initial proposal and affirmatively allow the use of MCTs. While we remain concerned that the use of MCTs where two or more channels are authorized could result in inefficient use of the spectrum, we agree with the parties that many MCT uses serve legitimate public interest goals that on balance outweigh this risk. For example, as the parties have noted, use of MCTs has enhanced other service offerings, facilitated the introduction of mobile services, such as nationwide paging, and promoted the sharing of channels under time-sharing agreements. We also note that, with the elimination in this order of old Section 22.119

[72] *See, e.g.*, Joint Commenters Reply Comments at 10-12.

[73] Telocator Comments at 35.

[74] OASBA Comments at 20.

[75] Telocator Comments at 35-36 and Reply Comments at 5-6.

[76] McCaw Comments at 31-32.

[77] SNET Comments at 4-5.

[78] Telocator Comments at 36.

(*see* paras. 67-71), which had generally prohibited the use of a transmitter licensed under Part 22 for any non-common carrier purpose, it does not make sense to prohibit a commercial mobile radio provider from using a MCT to transmit on additional Part 22 channels while allowing that provider to use the MCT to transmit on Part 90 channels as well as its assigned Part 22 channel.

Additional Channel Policy

45. **Proposal.** We proposed to eliminate the currently required traffic loading studies for applications requesting more than one channel for a new station, or one or more additional channels for an existing station in the paired spectrum designated for one-way or two-way mobile operation. We explained that this proposal was based on the proliferation of competitive telecommunications services, our decisions in other proceedings affecting public mobile service[79] channel usage, and our concerns regarding the burden these studies impose on licensees and our staff. Instead of requiring traffic loading studies to justify requests for additional channels, we proposed to allow applicants to apply for no more than two channels at one time. A licensee would be required *to be providing service* on those channels before applying for additional channels. The *Notice* further explained that this method would allow licensees that need additional channels the opportunity to obtain them, while continuing to provide an adequate safeguard against warehousing.[80]

46. **Comments.** Most of the parties support elimination of the requirement for traffic loading studies. They believe that these studies are of questionable reliability[81] and are unnecessary in view of the increased competition to mobile telephone service offered by cellular systems.[82] They note that it will reduce the current burdens on both licensees and the Commission associated with the preparation and analysis of loading studies.[83] The commenters, however, are split in their support for our proposal to limit the number of channels that applicants may apply for at one time. Joint Commenters, who support our proposal generally, question the fairness of allowing a carrier intending to provide one-way paging service using the one-way and two-way mobile channels to request two channels at one time while limiting a carrier intending to provide one-way paging service using the one-way paging channels to requesting one channel at a time.[84] They suggest that either we should allow the same number of co-pending channel requests for both one-way and two-way channels, or applicants seeking the two-way channels should be required to provide two-way service.

47. Telocator and Metrocall oppose our proposal to require a licensee to provide service on its authorized channels before applying for additional channels. They believe that licensees should be allowed to apply for an additional channel as soon as the previous application is granted, and not have to wait until the station is actually constructed and providing service.[85] They argue that the proposed rule would delay service to the public, particularly in cases where a pending application requires international coordination, which can sometimes be a lengthy process. Expressing the opposite concern, Arthur K. Peters, Consulting Engineers (AK Peters) argues that the "two channels at one time" policy will allow channel hoarders to acquire additional channels without having any significant traffic on the channels they already have. As a compromise, it suggests that applications only be allowed in increments of one channel for the same geographic area.[86]

48. **Discussion.** We will adopt our proposal to eliminate traffic loading studies. The commenters concurred in our finding that these studies are often of questionable reliability and are burdensome for both licensees and the Commission's staff. We agree, however, with the commenters who note that the proposed rule, in conjunction with our existing additional channel policy for one-way paging channels, would have the unintended result of allowing a carrier seeking to provide paging service using the one-way or two-way channels to obtain two such channels at one time while allowing a carrier seeking to provide paging service using the one-way paging channels to obtain only one channel at one time. To rectify this inconsistency, we amend the rules to allow carriers seeking to provide paging service to obtain only one channel at one time, regardless of whether the channels are designated exclusively for one-way paging or for one-way and two-way mobile operation. For applications proposing a two-way mobile telephone service such as IMTS (but not a two-way paging service), we will allow applicants to obtain two channels at one time as we proposed.

49. We emphasize that, in either case, the carriers must receive the authorizations, construct the stations, provide service to subscribers as we have defined it *supra*, and notify the Commission of the commencement of that service before

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[79] *See, e.g.*, Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and Other Services, CC Docket No. 87-120, First Report and Order, 4 FCC Rcd 1576 (1989), in which the Commission decided to allow market forces to determine which common carrier services are offered on two-way public mobile channels.

[80] The Commission has been using a similar procedure for several years to govern additional channel requests for one-way paging operations. The difference between that current procedure and our proposal is that a licensee now may file an application for an additional paging channel as soon as the previous application has been granted.

[81] *See* Joint Commenters Comments at 8; Telocator Comments at 39.

[82] Joint Commenters Comments at 8-9.

[83] GTE Comments at 5; New Vector Comments at 8.

[84] Joint Commenters Comments at 9-10, 72-73.

[85] *See, e.g.*, Telocator Comments at 40; Metrocall Comments at 29.

[86] AK Peters Comments at 8.

seeking additional channels in the same general service area. Our new rules provide that applications for additional channels in an area that are filed before the applicant notifies the Commission of commencement of service on channels already assigned to the same applicant in the same general service area may be dismissed. We disagree with Telocator and Metrocall that the Commission should accept an application for additional channels as soon as the previous application is granted. Although we currently allow this practice, we believe that continuing to allow it would encourage channel hoarding as described by AK Peters.

BETRS Channel Assignment Policy

50. **Proposal.** We proposed in the *Notice* to apply the additional channel policy proposed for the Paging and Radiotelephone Service to the Rural Radio Service as well because stations in both services use many of the same channels. Also, we noted that Part 22 does not currently contain any technical rules for assignment of channels to Basic Exchange Telephone Radio Systems (BETRS) in the Rural Radiotelephone Service. We requested comments as to what rules are necessary to govern channel assignments for BETRS, and the technical criteria that should be used.

51. **Comments.** The commenters oppose applying to BETRS the Paging and Radiotelephone Service rule limiting carriers to two channels per application cycle. For example, U S WEST New Vector Group, Inc. (New Vector) argues that the "two channel at a time" rule is inappropriate because it does not consider how channels are used for BETRS in this service.[87] It explains that BETRS channels are used to provide a grade of service that is equivalent to landline telephone exchange service, and that the number of channels needed in each individual case is determined by a number of varying factors.[88] GTE, NewVector, and United States Telephone Association (USTA) suggest that the number of channels assigned in a BETRS authorization should be based on industry-developed technical criteria that take into consideration the number of subscribers to be served, the planned grade of service,[89] the terrain, and potential for interference.[90] They state that the existing rule (that allows assignment of no more than four channels per application cycle) in effect prevents carriers from using BETRS to provide rural subscribers with the necessary grade of service. The proposed rule, they argue, would further limit the quality of service and the usefulness of BETRS. GTE and New Vector propose that we adopt a rule that establishes a procedure for assigning channels for fixed rural service. USTA recommends that the Commission allow providers of rural radio service to submit projected traffic studies and other showings to justify the need for additional channels.

52. **Discussion.** Although we proposed to apply the "two channels at a time" rule to Rural Radiotelephone Service generally, we agree with the commenters that it makes little sense when applied to BETRS specifically. BETRS technology is spectrum efficient in that it uses relatively low power and provides two or four full duplex audio channels per radio channel pair. Nevertheless, to provide 40 rural customers with private line grade service (meaning service with a negligible blocking level, as opposed to party line service) could require 10 channel pairs. Thus, we agree with the commenters that applying the two channel limit to BETRS would restrict the installation of such facilities and in certain situations could prevent using BETRS to provide telephone exchange service to customers in very remote rural areas.[91]

53. We have added a rule to govern BETRS channel assignments along the lines suggested by the parties, but which also contains safeguards to prevent BETRS from using the entire 454 MHz spectrum in urban or populated areas where there is presently substantial demand for paging and radiotelephone service.[92] Under this rule, the number of additional channels assigned to BETRS in the Rural Radiotelephone Service will be determined on a case-by-case basis, taking into account all relevant factors, including the grade of service required, the equipment utilized, the amount and type of service for which demand is projected, the clustering of the customer locations, the terrain, and the potential for interference between systems. In addition, BETRS applicants will be required to demonstrate that ample spectrum would remain, after grant of their application, to meet present and projected future demand for mobile service in the area involved. We also are adding rules governing the technical characteristics of BETRS equipment as suggested by the commenters.[93] We believe that these new rules will permit us to assign an adequate number of channels for BETRS in rural areas while, at the same time, ensuring that sufficient 454 MHz public mobile spectrum remains available to meet present and future mobile service needs.

[87] New Vector Comments at Appendix I, p.36.

[88] *Id.*

[89] Requirements for a particular minimum grade of service for basic exchange telephone service are generally established by state public utility commissions.

[90] GTE Comments at 23; USTA Comments at 5-6.

[91] To provide private line grade service to customers in very remote areas, often the only alternative to BETRS is the installation of copper wire. The use of wire, however, is often infeasible because it is expensive to install and maintain, is vulnerable to damage and theft, requires right-of-way or easements through private property which may be expensive or difficult to obtain in some cases, and installation may harm environmentally sensitive areas.

[92] *See* discussion of new Section 22.719 in Appendix A.

[93] *See* discussion of new Sections 22.567 and 22.759 in Appendix A.

Cellular Electronic Serial Numbers

54. **Proposal.** We proposed in the *Notice* a new rule (Section 22.919) intended to help reduce the fraudulent use of cellular equipment caused by tampering with the unique Electronic Serial Numbers (ESN) that identify mobile equipment to cellular systems. The purposes of the ESN in a cellular telephone are similar to the Vehicle Identification Numbers in automobiles. That is, it uniquely identifies the equipment in order to assist in recovery if it is stolen. More importantly, in the case of cellular telephones, the ESN enables the carriers to bill properly for calls made from the telephone. Any alteration of the ESN renders it useless for this purpose. The proposed rule explicitly establishes anti-fraud design specifications that require, among other things, that the ESN must be programmed into the equipment at the factory and must not be alterable, removable, or in any way able to be manipulated in the field. In addition, the proposed rules require that the ESN component be permanently attached to a main circuit board of the mobile transmitter and that the integrity of the unit's operating software not be alterable.

55. **Comments.** The commenters generally support our proposal,[94] but they suggest some modifications. For example, BellSouth, Southwestern Bell, GTE, and CTIA suggest that our proposal should be modified to provide that equipment already manufactured, is exempt from the rule.[95] They argue that subjecting existing phones to this rule would be very expensive and difficult, if not impossible, to implement. Therefore, they recommend that the rule apply only to phones manufactured after a particular date.[96] NYNEX recommends that we not require the ESN chip to be secured to the main circuit board of the mobile transmitter as proposed. Rather, NYNEX suggests that the ESN chip be attached to the frame of the radio and attached to the logic board by cable.[97] In addition, it recommends that operating software be encoded or scattered over different memory chips.[98] Motorola, Inc. (Motorola) and Ericsson Corp. (Ericsson), two manufacturers of cellular mobile equipment, suggest that the proposal be modified to allow authorized service centers or representatives to make necessary and required changes to ESNs in mobile and portable units in the field.[99]

56. Southwestern Bell recommends that the rule also apply to mobile equipment associated with a wireless private branch exchange (PBX).[100] CTIA suggests that the proposal be modified in several respects. First, it states that we should clarify that requiring a mobile transmitter to have a "unique" ESN, means that any particular ESN will not exist in more than one mobile unit. Second, CTIA suggests that ESN manipulation not be permitted "outside a manufacturer's authorized facility." Third, it requests that cellular mobile units be required to be designed to comply with the "applicable industry standard for authentication."[101] New Vector supports the proposed rule, but emphasizes that the ESN criteria should be incorporated into the type-acceptance rules to clarify that manufacturers will be subject to the Commission's enforcement procedures if they do not comply with the ESN requirements.[102]

57. C2+ Technology (C2+) requests that we allow companies to market ancillary cellular equipment that emulates ESNs for the purpose of allowing more than one cellular phone to have the same telephone number. It argues that emulating ESNs in the way it describes benefits the public, does not involve fraud, and retains the security and integrity of the cellular phones.[103] In opposition, Ericsson asserts that the rules should include procedures to ensure that ESNs are not easily transferable through the use of an encrypted data transfer device.[104] Similarly, New Par suggests that the proposed rule proscribe activity that does not physically alter the chip yet affects the radiated ESN by translating the ESN signal that the mobile unit transmits.[105]

58. **Discussion.** The record before us demonstrates the need for measures that will help reduce the fraudulent use of cellular equipment caused by tampering with the ESN. We therefore adopt the proposed rule for the reasons set forth below.

59. Contrary to the suggestion of one commenter, the ESN rule will not prevent a consumer from having two cellular telephones with the same telephone number. Changing the ESN emitted by a cellular telephone to be the same as that emitted by another cellular telephone does not create an "extension" cellular telephone. Rather, it merely makes it impossible for the cellular system to distinguish between the two telephones. We note that Commission rules do not prohibit assignment of the same

[94] *See, e.g.*, PacTel Comments at 2; CTIA Comments at 7-8.

[95] BellSouth Comments at Appendix 2, p.36; Southwestern Bell Comments at 28-29; GTE Comments at 30; CTIA Comments at 8.

[96] For example, BellSouth suggests that the anti-fraud measures should not apply to equipment type-accepted before January 1, 1993.

[97] NYNEX Comments at 8.

[98] *Id.* at 8-9.

[99] Ericsson Reply Comments at 2-5; Motorola Reply Comments at 3.

[100] Southwestern Bell Comments at 29.

[101] CTIA Comments at 8.

[102] New Vector Comments at Appendix I, p.44.

[103] C2+ Comments at 1-2.

[104] Ericsson Reply Comments at 3-4.

[105] New Par Comments at 21-22.

telephone number to two or more cellular telephones.[106] It is technically possible to have the same telephone number for two or more cellular telephones, each having a unique ESN.[107] If a cellular carrier wishes to provide this service, it may. In this connection, we will not require that use of cellular telephones comply with an industry authentication procedure as requested by CTIA, as this could have the unintended effect of precluding multiple cellular telephones (each with a unique ESN) from having the same telephone number.

60. Further, we conclude that the practice of altering cellular phones to "emulate" ESNs without receiving the permission of the relevant cellular licensee should not be allowed because (1) simultaneous use of cellular telephones fraudulently emitting the same ESN without the licensee's permission could cause problems in some cellular systems such as erroneous tracking or billing; (2) fraudulent use of such phones without the licensee's permission could deprive cellular carriers of monthly per telephone revenues to which they are entitled; and (3) such altered phones not authorized by the carrier, would therefore not fall within the licensee's blanket license, and thus would be unlicensed transmitters in violation of Section 301 of the Act. Therefore, we agree with New Par and Ericsson that the ESN rule should proscribe activity that does not physically alter the ESN, but affects the radiated ESN, including activities that transfer ESNs through the use of an encrypted data transfer device.

61. With respect to the proposal to allow alteration of ESNs by manufacturers' authorized service centers or representatives, we note that computer software to change ESNs, which is intended to be used only by authorized service personnel, might become available to unauthorized persons through privately operated computer "bulletin boards". We have no knowledge that it is now possible to prevent unauthorized use of such software for fraudulent purposes. Accordingly, we decline to make the exception requested by Motorola and Ericsson.

62. We further agree with the commenters that it would be impractical to apply the new rule to existing equipment. Accordingly, we are not requiring that cellular equipment that is currently in use or has received a grant of type-acceptance be modified or retrofitted to comply with the requirements of this rule. Thus, the ESN rule will apply only to cellular equipment for which initial type-acceptance is sought after the date that our rules become effective. Nevertheless, with regard to existing equipment, we conclude that cellular telephones with altered ESNs do not comply with the cellular system compatibility specification[108] and thus may not be considered authorized equipment under the original type acceptance. Accordingly, a consumer's knowing use of such altered equipment would violate our rules. We further believe that any individual or company that knowingly alters cellular telephones to cause them to transmit an ESN other than the one originally installed by the manufacturer is aiding in the violation of our rules. Thus, we advise all cellular licensees and subscribers that the use of the C2+ altered cellular telephones constitutes a violation of the Act and our rules.

63. With respect to NYNEX's proposed modifications for securing the ESN chip to the mobile transmitter, the record does not convince us that these modifications will make the ESN rule more effective. Therefore, we do not adopt NYNEX's proposal. We agree with Southwestern Bell that the ESN rule should apply to mobile equipment associated with wireless PBX if the equipment can also be used on cellular systems. We also clarify that the new ESN rule prohibits the installation of an ESN in more than one mobile transmitter. Finally, as suggested by New Vector, we amend the type-acceptance rule to refer to the newly adopted ESN rule.[109]

Use of Part 22 Transmitters in Non-Common Carrier Services

64. **Proposal.** Section 22.119 of the Rules currently prohibits the concurrent licensing and use of transmitters authorized to provide common carrier service under Part 22 of the Rules for non-common carrier communications purposes.[110] Although the regulatory history is silent on the purpose of this rule, we believe that it was adopted to assure that radio common carrier transmitters would be used exclusively for common carrier service in order to prevent delays and interruptions in service to subscribers.

65. In the *Notice of Proposed Rule Making and Order (NPRM and Order)*,[111] we stated that several factors make it appropriate to reevaluate the Section 22.119 prohibition and to propose deleting or modifying the rule. First, advances in technology, such as improved digital transmission techniques

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[106] The telephone number is referred to in the cellular compatibility specification as the Mobile Identification Number or "MIN".

[107] It is not technically necessary to have the same ESN in order to have the same telephone number. Nevertheless, the authentication software used by some cellular systems does not permit two cellular telephones with the same telephone number. In such cases, cellular carriers should explain to consumers who request this service that their system is not yet capable of providing it.

[108] *See* old Section 22.915, which becomes new Section 22.933 in Appendices A and B.

[109] *See* discussion of new Section 22.377 in Appendix A.

[110] Section 22.119 currently states:

> "Transmitters licensed for operation in services governed by this part may not be concurrently licensed or used for non-common carrier communication purposes. However, mobile units may be concurrently licensed or used for non-common carrier purposes provided that the transmitter is type-accepted for use in each service."

[111] Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Services, CC Docket No. 94-46, Notice of Proposed Rule Making and Order, 9 FCC Rcd 2578 (1994).

and store-and-forward technology,[112] have resulted in dramatically increased capacity, thus reducing the need for a transmitter to be devoted on a full-time basis to common carrier uses. Second, licensees providing wide-area service could achieve substantial economies of scale by sharing transmitters when building a regional or nationwide system without diminishing the licensee's quality of service. Third, the 1993 Budget Act amends Sections 3(n) and 332 of the Communications Act to create a comprehensive framework for all mobile services, including Part 22 common carrier services, private land mobile services, and future services such as Personal Communications Services (PCS). The 1993 Budget Act also amends the Communications Act to specify a single "commercial mobile radio service."[113] Lastly, increased competition in the industry provides an assurance that service to existing customers will not suffer from joint use of transmitters when the carriers are offering distinct services on different channels.

66. Because of these factors, the *NPRM and Order* tentatively concluded that permitting a single transmitter to operate on both common carrier and private channels would not cause any disruption or impairment of service to existing Part 22 subscribers. Nevertheless, the *NPRM and Order* sought comment on whether the proposed rules should be limited to circumstances where the joint use will facilitate the provision of national or regional service as an overlay to local paging service or where the Part 22 licensee is utilizing batched paging. In addition, we sought comment on whether there were any other circumstances where we should not permit the shared use of transmitters licensed under Part 22. In the event that we decided to modify or eliminate Section 22.119, we solicited comment on whether safeguards should be adopted to prevent warehousing of exclusively assigned channels. Finally, we sought comment on whether we should allow two different licensees to share the same transmitter.

67. **Comments and Discussion.** All of the commenters are in favor of permitting the joint licensing and use of transmitters in the common carrier and private carrier services.[114] We agree with the parties that elimination of Section 22.119 will serve the public interest. As the parties have indicated, radio common carriers (RCCs) providing wide-area service continue to expand their paging service throughout the United States. In an effort to meet subscriber demands for service that extends beyond their existing RCC coverage areas, Part 22 licensees have begun to offer nationwide or regional service on private carrier paging channels as an overlay to their common carrier service. Under the existing rule, carriers are required to construct private carrier paging facilities at locations where they already have Part 22 transmitters with additional capacity. The parties argue that elimination of the prohibition will promote economic efficiencies by reducing their costs of constructing and operating facilities dedicated to both private and common carrier paging when air time is available for both private carrier paging and common carrier paging on the existing common carrier transmitters. The parties note that the savings resulting from utilizing existing transmitters will allow them to offer lower prices to their subscribers.

68. Furthermore, we agree with the parties that eliminating Section 22.119 is consistent with the 1993 Budget Act's amendment of the Communications Act and the Commission's recent rule makings to implement these amendments. The new regulatory structure in the *Second Report and Order in GN Docket No. 93-252* (*Second Report and Order*), was designed to ensure symmetrical regulatory treatment of competing service providers, to promote further competition and economic growth in the mobile service marketplace, and to establish an appropriate level of regulation to protect mobile service customers.[115] Elimination of Section 22.119 will remove the existing rule requiring separate dedicated transmitters for private carrier paging (PCP) and RCC paging services. Thus, licensees that already operate RCC transmitters will be able to institute competitive PCP service at those locations earlier than they otherwise could. Moreover, elimination of Section 22.119 is consistent with the Commission's determination in the *Second Report and Order* to classify PCP services and common carrier paging services as CMRS because it promotes symmetrical regulatory treatment of PCP and RCC services.

69. We also agree with the parties that the competitiveness of the paging industry provides assurance that service to existing paging customers will not suffer. For example, in the *Second Report and Order* the Commission concluded that the paging industry is highly competitive,[116] based on a recent study finding that, on average, a paging carrier competes with five carriers, and may compete with as many as 19 other carriers in a given market.[117] Paging companies compete on the basis of geographic coverage, customer service, enhanced service, and

[112] Under store and forward technology, pages are batched and then sent as a group. The transmission time is the same regardless of the number of paging messages in the group.

[113] 47 U.S.C. § 332(c)(1) (1993).

[114] Comments were filed by AirTouch Paging (AirTouch) and Arch Communications Group, Inc. (Arch); Celpage, Inc.; GTE; McCaw; Metrocall, Inc.; Message Center Beepers, Inc. and Beepage, Inc.; Metropolitan Houston Paging Services, Inc.; Personal Communications Industry Association (PCIA); PageNet; Paging Partners Corporation; PageMart II, Inc.; the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc.; Southwestern Bell; and TeleComm Systems, Inc. PCIA filed Reply Comments while AirTouch and Arch filed Joint Reply Comments.

[115] *See* Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994).

[116] *See Second Report and Order*, 9 FCC Rcd at 1468.

[117] *Id.*, citing R. Ridley, 1993 Survey of Mobile Radio Paging Operators, Communications, Sept. 1993 at 20.

price. This highly competitive environment encourages paging carriers to provide high quality service or risk losing customers to other carriers.

70. We agree with the majority of commenters that Section 22.119 should be deleted in its entirety, and should not be retained based on the service being offered or the technology used by the carrier. Furthermore, we do not believe that elimination of Section 22.119 will encourage warehousing. As the parties have noted, the elimination of Section 22.119 will not allow licensees to duplicate interchangeable channels at common sites, but will only allow them to add channels capable of providing a distinct service. Hence, it appears unlikely that licensees will be capable of reserving channels for future use or hoarding channels to block competition. Therefore, we do not believe that it is necessary to impose safeguards to deter warehousing.

71. Finally, we do not believe that it is in the public interest to allow two different licensees to share the same transmitter. We are concerned that the shared use of the same transmitter by two different licensees may raise questions regarding the control and responsibility for the transmitter. We are also concerned about the broader service disruptions that outages of shared transmitters would cause.

Power Limits for 931 MHz Paging Stations

72. **Proposal.** In *Height Power Increases in the Public Mobile Service*, 4 FCC Rcd 5303 (1989), *modified*, 5 FCC Rcd 4604 (1990), the Commission increased the maximum power limit for transmitters operating in the 931 MHz band to 3500 Watts effective radiated power (ERP), and also adopted geographic separation requirements for higher power transmitters to prevent co-channel interference. Nationwide network paging licensees may operate transmitters on the three nationwide paging channels (931.8875, 931.9125, and 931.9375 MHz),[118] with power up to, but not exceeding, 3500 Watts ERP, regardless of whether they have any co-channel transmitters in the vicinity. Because the nationwide licensees have been assigned a particular channel for exclusive use throughout the nation, co-channel interference to other licensees is not possible.

73. Licensees of paging transmitters on the other 931 MHz channels may operate transmitters with ERP exceeding 1000 Watts, up to a maximum of 3500 Watts, but only when the interfering contour of these transmitters is totally encompassed by the composite interference contour of existing co-channel transmitters of the same licensee.[119] This encompassment requirement limits the geographic area a single stand-alone transmitter can cover, allowing for a larger number of independent co-channel stations in any given area. The rule's reliance on surrounding transmitters, however, essentially limits the use of high power transmitters to interior locations in existing wide area 931 MHz paging systems. Carriers desiring to operate only a single 3500 Watt paging transmitter must first apply, receive authorization for, and construct several 1000 Watt transmitters covering the same area. This is impractical because of the delay and expense of constructing the unwanted surrounding transmitters.

74. In the *Notice of Proposed Rule Making and Order in CC Docket No. 93-116, (Paging Power Limits NPRM and Order)*,[120] we proposed to remove the encompassment requirement and allow licensees to operate 931 MHz paging stations with any ERP up to the maximum of 3500 Watts, provided that the applicable geographic separation requirements (which are designed to prevent co-channel interference) are satisfied. We pointed out that although operations in the 931 MHz band continues to increase rapidly, licensing activity consists in large part of applications for expansion of existing systems. Thus, the role of the encompassment rule in allowing more independent co-channel stations is less important than previously thought. In the *Paging Power Limits NPRM and Order*, we tentatively concluded that it would be in the public interest to allow operation of 931 MHz paging transmitters without the current requirement that such transmitters be surrounded by existing co-channel transmitters of the same licensee.[121] We suggested that this change would afford the benefits of higher power operation without unduly increasing the risk of interference. These benefits arise from the flexibility for paging licensees to use fewer transmitters to cover the same geographic area, resulting in efficiencies of scale, reductions in costs, and benefits to consumers. We indicated that any increased potential for interference resulting from high power operation would be balanced by reduction in the number of transmitters (each representing a possible source of interference).

75. Accordingly, in the *Paging Power Limits NPRM and Order* we proposed to eliminate the encompassment

[118] These three channels are reserved for use by nationwide paging operators. *See* Allocation of Spectrum in the 928-941 Band, 89 FCC 2d 1337 (1982), *recon. (Part 2)*, 93 FCC 2d 908 (1983), *aff'd sub nom.*, NARUC v. FCC, No. 83-1485 (D.C. Cir. Jan. 17, 1984); Third Report and Order, 97 FCC 2d 900 (1984), *recon.*, 57 RR 2d 1416 (1984). Thirty-seven other channels were made available for regional and local one-way paging service. *Id.*

[119] The Commission adopted the encompassment requirement as a method of limiting co-channel interference because our computer software at that time would not accommodate the additional transmitter classes. This shortcoming has been corrected.

[120] Amendment of Part 22 of the Commission's Rules Pertaining to Power Limits for Paging in the 931 MHz Band in the Public Mobile Services, CC Docket No. 93-116, Notice of Proposed Rule Making and Order Granting Petition for Waiver, 8 FCC Rcd 2796 (1993).

[121] *See* old Section 22.505(c)(2), 47 CFR § 22.505(c)(2).

requirement and several related rules.[122] We stated, however, that we would continue to classify 931 MHz transmitters and require that locations of these transmitters be in compliance with current rules for the class-by-class distance separation criteria for co-channel 931 MHz transmitters.[123] We also noted that we were not proposing to change the existing reliable service area and interfering contour radii in the Rules.[124]

76. We requested comment on these proposals generally, and on the potential for interference that might result from increased use of high power transmitters. In addition, we sought comment on whether the separation distances in our rules are adequate to protect future and existing stations from interference, including co-channel interference to and from stations operating in Canada and Mexico.

77. **Comments.** The commenters generally favor our proposal to eliminate the encompassment requirement and related rules.[125] They agree that the proposed changes would serve the public interest by allowing increased flexibility in system design and lower system infrastructure cost. They note that 931 MHz paging systems would be able to serve larger geographic areas with fewer transmitters, thus decreasing both equipment costs and associated recurring costs such as site rental and equipment maintenance.

78. The Utilities Telecommunications Council (UTC), the only commenter opposing our proposal, argues that high power paging facilities in the 931 MHz band are more likely to cause interference to adjacent channel multiple address systems (MAS) operating at 928 and 932 MHz.[126] UTC maintains that high power paging operations often reduce the range of MAS stations due to "receiver desensitization, transmitter noise, and intermodulation interference."[127] In this regard, UTC contends that, in GEN Docket 82-243,[128] the Commission acknowledged the potential for interference to MAS operations from paging systems in the 931-932 MHz band. UTC argues that the Commission should adopt procedures whereby applicants for higher power paging systems are required to remedy interference to MAS systems. For example, it suggests that applicants for higher power paging systems could be required to identify all MAS master stations within one mile of the proposed site, contact each of these MAS licensees, advise them of their pending applications, and correct at their own expense all interference to MAS systems.[129]

79. Although Pagenet supports the basic purpose of our proposal, it is concerned that elimination of the antenna height-power limits for 931 MHz would limit flexibility in modifying facilities that were established prior to the transmitter classification table. Pagenet argues that, so long as a 931 MHz transmitter has parameters that comply with the antenna height-power limits, the station operation should be treated as if it is Class L[130] and not have to meet the larger distance separation requirements of its actual class, if different from Class L. Although Pagenet agrees that all such transmitters should be reclassified (giving them a larger protected service area), it recommends that the Commission grandfather them insofar as the required minimum separation distances are concerned. Pagenet further recommends that the old height-power table be retained as a guideline for modification of those licensee classes, to avoid "stair-step" reductions in transmitter power resulting from small, unavoidable changes in antenna height.

80. **Discussion.** We conclude that it is in the public interest to adopt our proposal to remove the encompassment requirement and related rules. As the parties have noted, providing paging licensees with the flexibility to use fewer transmitters to cover a given geographic area will not only result in efficiencies in scale and reductions in equipment, construction, and operational costs, but also will conserve Commission resources,[131] improve the quality and cost of service to customers, and permit carriers to integrate new equipment and provide new services that otherwise might not be offered.[132] For example, PacTel states that facilitating the use of high power transmitters will enable licensees to use Telocator's proposed high speed data protocol to transmit large data files to

[122] Specifically, we proposed to delete old Sections 22.505(b), 22.505(c)(2), and 22.505(f)(2) of the Rules.

[123] We believed then, as we do now, that these measures alone are sufficient to guard against co-channel interference.

[124] 47 CFR § 22.504(b).

[125] *See, e.g.*, Telocator Comments at 2-3; Metromedia Paging Reply Comments at 2-3; SkyTel Reply Comments at 2; PacTel Paging Comments at 2-4; and PagePrompt USA Comments 2-3.

[126] UTC Comments at 4.

[127] *Id.*

[128] UTC cites Amendment of Parts 1, 21, 22, 74, and 94 of the Commission's Rules to Establish Service and Technical Rules for Government and Non-Government Fixed Service Usage of the Frequency Bands 932-935 MHz and 941-944 MHz, GN Docket No. 82-243, Memorandum Opinion and Order, 5 FCC Rcd 1624, 1627 (1990) (*Memorandum Opinion and Order in GN Docket No. 82-243*).

[129] UTC Comments at 6.

[130] Class L is the smallest class of 931 MHz paging transmitter, and is considered to have a 32.2 kilometer (20 mile) service radius and a 80.5 kilometer (50 mile) interfering contour radius. In the revision of the Paging and Radiotelephone Service rules, we are eliminating these class labels and simply specifying the service and interfering contour radii directly. *See* new Section 22.537, Tables E-1 and E-2, in Appendix B.

[131] Metromedia Comments at 1.

[132] *See, e.g.*, PagePrompt Comments at 2-3; PacTel Comments at 3.

subscribers over existing one-way paging channels.[133] As Telocator notes, adoption of our proposal conforms the 931-932 MHz band rules with the rules for nationwide network paging systems and the rules for narrowband personal communications services (PCS).[134]

81. We do not expect that removing the encompassment requirement and related rules will cause interference to MAS operating on 928 and 932 MHz, as UTC predicts.[135] The encompassment rule does not and was never intended to protect MAS systems; the only measure of protection it provides is to independent 931 MHz co-channel paging operations. Moreover, PacTel and PageNet state that, based on their experience as licensees of both 931 MHz paging stations and control stations in the 928 MHz band, UTC's concerns about MAS interference are unwarranted.[136] We believe that proper site management and proper engineering in designing systems are the appropriate mechanisms for avoiding interference.[137] We do, however, require licensees to cooperate in resolving interference situations if they arise.

82. In regard to Pagenet's concern for existing 931 MHz paging transmitters at locations that meet required minimum separations for a Class L but not their actual class, we agree that disrupting these existing paging operations unnecessarily (by requiring them to operate at reduced parameters upon modification) would not serve the public interest.[138] Accordingly, we will allow licensees to continue to operate these facilities at the equivalent of their currently authorized parameters, while considering them to have a 32.2 kilometer (20 mile) service radius and a 80.5 kilometer (50 mile) interfering contour radius. We disagree, however, with Pagenet's request that we retain the old height-power table as a guide for modifications. This table was based on an earlier propagation model that differs from the model used for the service and interfering contour radii tables that we are adopting today.[139] We believe that market area licensing, as suggested by several of the commenters, may be the best solution to the problem of allowing modifications to these grandfathered stations. As stated *supra*, however, we are not adopting such procedures herein. In the meantime, we will allow modifications to the affected 931 MHz paging facilities, using the same antenna height and power, or a higher antenna height with the effective radiated power reduced by a factor of 10 for every doubling of antenna height. This reduction is consistent with the interfering contour radii table and use of it will eliminate the "stair-step" problem that Pagenet cites.

Recent Cellular Proposals

83. **Proposals.** In the *Further Notice*, we proposed to streamline and improve our existing processing procedures in ways that will benefit existing licensees as well as future users of mobile services. The first group of proposals were directed at licensees in the cellular radio service, while the second group of proposals concerned initial licensing procedures for 931 MHz paging channels.

84. Initially, we shall discuss the proposals directed at licensees and applicants in the cellular radio service. In the *Further Notice*, we proposed to require that licensees state, when notifying the Commission of minor modifications to their systems that involve Service Area Boundary (SAB) extensions into an adjacent market, whether the five year build-out period for the adjacent market has expired and, if so, to state that the SAB extension does not cover any unserved area. This requirement would save our staff a significant amount of time which is currently used in making a determination as to whether an SAB extension covers any unserved area in a market where the five year build-out period for that block has expired.[140]

85. We also proposed revising the Commission's Rules to change the scale of maps which we require cellular applicants and licensees to file with the Commission. Currently, we require maps on a scale of 1:250,000. We concluded tentatively that maps with a scale of 1:500,000 would serve the public interest by reducing both filing burdens on applicants as well as review burdens on the staff.

86. In the *Notice*, we proposed to eliminate the requirement that licensees notify the Commission after making minor changes to their facilities or adding transmitters in the interior of the coverage areas of previously authorized stations. In this *Report and Order*, we adopt that proposal, with the exception that cellular licensees must continue to notify us of changes that affect their CGSA boundary. The reason for this exception lies in one of our proposals in the *Further Notice*.

87. In the *Further Notice*, we stated that if we adopted the

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[133] PacTel Comments at 3.

[134] Telocator Comments at 3.

[135] UTC cites the Commission's 1990 *Memorandum Opinion and Order in GN Docket No. 82-243*. That Memorandum Opinion and Order does not specifically address the potential for interference to MAS operations from paging operations in the 931-932 MHz frequency range.

[136] PageNet Reply Comments at 3; PacTel Reply Comments at 2.

[137] *See Memorandum Opinion and Order in GN Docket No. 82-243, supra*, at footnote 128.

[138] We are not aware of any co-channel interference problems resulting from the existence of these "short-spaced" stations.

[139] In fact, it was the poor correlation between the old height power limit table and the old station classification tables that led to the discrepancy between these stations' operating parameters and the separations under which they were authorized.

[140] Eligible applicants may apply to serve such areas in accordance with the Commission's unserved area application procedures. *See* 47 C.F.R. §§ 22.31 and 22.924 (1993).

proposal to eliminate the requirement that licensees notify us about certain minor changes, we planned to eliminate the listing of internal cell sites on our authorizations for existing licensees. In brief, we proposed to eliminate the "licensing" of inner cell sites. Further, we explained that we intend to maintain accurate, current information on cell sites that constitute CGSA boundaries ("external cell sites"), and to that end we proposed to require all cellular licensees to submit the following information for each external cell site: (1) the geographic coordinates and cell site location description, and (2) the operating and technical parameters for the cell site. The submission of this information would enable us to determine which cell sites are the "external" ones, and then delete from our computer data base the data for all cell sites except the "external" ones. We could at the same time correct errors or omissions in the technical data for the external cells. This would reduce the amount of data that we keep on cellular systems to the minimum necessary to accurately locate CGSA boundaries. One benefit of adopting the proposal would be that cellular authorizations would no longer list every cell site in a system, only the external ones that define the CGSA boundary. This would result in much shorter authorizations, especially for the large cellular systems, thus reducing the administrative and processing costs of issuing authorizations.

88. We also proposed to modify Section 22.925 of the Rules, which sets forth the updated information for existing cellular systems that licensees are required to submit to the Commission 60 days before the end of their five year build-out period. Currently, a licensee must file a full-size map on a scale of 1:250,000, a reduced map, and a current channel utilization chart depicting the location of each cell site and the system's coverage area. We proposed to revise the scale of the full-size map to a scale of 1:500,000, to require that all maps submitted show only the exterior cell sites and the respective service area boundaries that make up the CGSA, and to require licensees to submit an exhibit providing the coordinates for each exterior cell site and the information currently required in the MOB-3 Table of FCC Form 401. Further, we proposed to no longer require the submission of a channel utilization plan or chart. Lastly, we proposed that licensees be required to label all information filed with the number[141] of the relevant market. The foregoing proposals would reduce the amount of material submitted for system information updates and help to reduce staff processing time.

89. **Comments and Discussion.** The majority of the parties that filed comments on our cellular radio proposals agreed with the essential elements of those proposals.[142] Except as noted herein, we adopt those proposals. Our *Further Notice* proposed that licensees state, when notifying the Commission (on FCC Form 489) of minor modifications to their systems that involve Service Area Boundary (SAB) extensions into an adjacent market, whether the five year build-out period for the adjacent market has expired, and if so, to state that the SAB extension does not cover any unserved area. No commenting party disagreed with this proposal. The Rural Cellular Association (Rural Cellular) suggests that we adopt the same procedure for major modification filings made on FCC Form 401 applications.[143] We agree with this suggestion and change our requirements accordingly.

90. Several comments addressed our proposed requirement that cellular licensees must submit certain data about their expanded systems 60 days before the expiration date of their five-year build-out period.[144] The information required for a given cellular system is commonly referred to as the system information update (SIU) and is used by potential unserved area applicants to determine which areas in a given MSA or RSA are unserved at the end of the build-out period. The SIU requirement is contained in Section 22.925 of our present Rules, and will be part of new Section 22.947(c) of our new Rules. U S WEST, Inc. (U S WEST) has recommended that we replace the requirement that SIUs be submitted sixty days before the expiration date of a licensee's five-year build-out period with a requirement that the SIUs be submitted on the expiration date itself.[145] U S WEST claims that licensees must currently file updates to their SIUs during the 60-day period preceding the relevant expiration date if those licensees file expansion applications after the current filing date. Further, U S WEST argues, potential unserved area applicants might need to consult the Commission's files several times prior to the date they file their applications to determine the actual service area of existing licensees whose five-year build-out periods are expiring.

91. We reject this recommendation for several reasons. First, neither our *Notice* nor our *Further Notices* in this proceeding proposed any such changes to our SIU requirement. Rather, our *Further Notice* dealt with the proposed data to be submitted as part of the SIUs, including the map of the cellular system and related data. Thus, it would appear that

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[141] The MOB-3 Table corresponds to the "C" section of new FCC Form 600, which is proposed to be utilized by all commercial mobile radio services.

[142] Comments on the recent cellular proposals were filed by: ALLTEL Mobile Communications, Inc. (ALLTEL); Bell Atlantic Mobile Systems, Inc. (Bell Atlantic); The Cellular Telecommunications Industry Association (CTIA); The Committee for Effective Cellular Rules (Cellular Committee); Comp Comm, Inc. (Comp Comm); GTE Service Corporation (GTE); McCaw Cellular Communications, Inc. (McCaw); New Par; Nextel Communications, Inc. (Nextel); NYNEX Corporation (NYNEX); The Rural Cellular Association (Rural Cellular); Southwestern Bell Mobile Systems, Inc. (Southwestern Bell); U S WEST; and Vanguard Cellular Systems, Inc. Reply Comments were filed by Cellular Committee, McCaw and Southwestern Bell.

[143] Rural Cellular Comments at 3.

[144] During the five-year build-out period, a licensee in a particular MSA or RSA is accorded an exclusive right to construct cellular facilities in that MSA or RSA on a particular channel block. *See* Section 22.31(a)(1)(i) of the Commission's present Rules.

[145] U S WEST Comments at 2-5.

U S WEST's recommendation is beyond the scope of this proceeding. Second, licensees have five years to take advantage of their opportunity to file expansion applications free of any competing applications. In that light, we have not seen very many instances in which licensees have needed to update their SIUs prior to the end of their build-out period. In brief, even if we determined that U S WEST's recommendation could be considered in this proceeding, we do not perceive any compelling public interest reason for changing the due dates for SIUs.

92. Our *Further Notice* also proposed that licensees be required to label all information submitted as part of their SIUs with the number of the relevant market. No commenters have objected to this requirement. GTE Service Corporation (GTE) and AirTouch Communications (AirTouch) recommend that SIU filings include the channel block as well as the relevant market number as part of the label identifying relevant documents.[146] We believe that this recommendation will assist our staff and members of the public in reviewing SIUs. Therefore, we accept this recommendation. Comp Comm,[147] Southwestern Bell,[148] and McCaw[149] request clarification as to what maps must be submitted when an SIU filing is required if a licensee has a contour extension into an adjacent market and the build-out period for that market is about to expire. Footnote 13 of the *Further Notice* explains that if a licensee in Market "Y" has received permission to extend a contour into an adjacent market (Market "X") and if Market X's build-out period is expiring, the licensee in Market "Y" must submit a map of Market X to the Commission by the same date that Market "X's" SIU is due. This map must show the extension into that market and must include the following statement: "This is the SIU for Market "X" filed by the Market "Y" carrier." The commenters ask whether the licensee of Market "Y" must submit a map showing all of Market X or just those portions of Market X which include the extension from Market "Y." The licensee of Market "Y" may submit the map for its market (Market "Y") as long as it shows enough of Market "X" to depict the complete extension into Market "X." Further, the map must be clearly labeled to indicate Market "X' and market "Y" and the boundary between the markets should be highlighted. The Committee for Effective Cellular Rules (Cellular Committee) requests that we require, as part of the SIU filing, the submission of a date-stamped FCC Form 489 for each of the external cell sites of a given cellular system.[150] We reject this request as excessive in light of the data we are already requiring for the SIU filing.

93. Several comments addressed our plan to eliminate the listing of internal cell sites on our authorizations for existing licensees. We proposed that licensees make a one-time filing of information concerning their external sites to enable us to update our database systems. The specific information sought is already required by Schedule B of FCC Form 401. Southwestern Bell asks whether licensees may submit the actual pages of existing Schedule Bs associated with each of the external cell sites.[151] McCaw supports this request.[152] We grant this request. We agree that submitting this information in this form would meet the requirement because the data sought would have been compiled in conjunction with previous applications. Of course, if any such information is no longer accurate, correct current information must be provided. Southwestern Bell suggests that the information from Table MOB-2 of FCC Form 401 should not be required in the one-time filing because it would be unnecessary if the information from Table MOB-3 is included.[153] The data requested in the two tables are not duplicative, however, we agree that it is the Table MOB-3 data that is used to determine the CGSA. Accordingly, we will not require that the information contained in Table MOB-2 be submitted with the one-time filing.

94. NYNEX recommends that when an external cell site is taken out of service and the service contour is thereby reduced, carriers should be required to submit information detailing the service area changes.[154] McCaw concurs in this recommendation,[155] as do several commenters who responded to our initial *Notice* herein. As explained in paragraph 25, *supra*, we have adopted this recommendation. Cellular Committee opposes our proposal to eliminate the licensing of inner cell sites. It claims that elimination of licensing information for inner cell sites will hinder the enforcement of numerous technical, environmental, land-use and operational requirements. One of the problems perceived by Cellular Committee is that internal cells might replace former external cells, but since internal cells are not licensed, the Commission would not know what constitutes the licensee's CGSA boundary.[156] We do not believe that Cellular Committee's fears are justified. First, a cellular licensee is responsible for complying with our rules and those of any other lawful state or federal authority, whether or not all of its internal cells are individually listed in our data base or on the authorization. We are eliminating our requirement that licensees notify us of

[146] GTE Comments at 6; AirTouch Comments at 4.

[147] Comp Comm Comments at 4-5.

[148] Southwestern Bell Comments at 4.

[149] McCaw Reply comments at 6.

[150] Cellular Committee Comments at 5-6.

[151] Southwestern Bell Comments at 3.

[152] McCaw Reply Comments at 5.

[153] Southwestern Bell comments at 3.

[154] Nynex Comments at 5-6.

[155] McCaw Reply Comments at 3-4.

[156] Cellular Committee Comments at 3 and 5.

additional or modified internal cells because it is the external cells that by definition, as a group form the system's CGSA. Nevertheless, a cellular licensee still remains responsible for its entire system, including its internal cells. Second, we are requiring cellular licensees to file notifications (FCC Form 489) with us when they delete or replace an external cell. Further, after the five year build-out period has expired, a new full-sized map must be filed with any application proposing a change in the CGSA.[157] Several commenters have specific recommendations concerning the precise timing and sequence in which the one-time filings should be submitted.[158] We hereby delegate authority to the Chief, Common Carrier Bureau, to decide the sequence and the timing for the one-time filings and any other matter pertaining thereto.

931 MHz Licensing Procedures

95. **Proposal.** In the *Further Notice*, we proposed special new licensing procedures for all 931 MHz paging applications in order to process such applications in a consistent, satisfactory manner. In brief, our proposals would require applicants to specify the channel for which they seek authorization and the channel requested must be deemed available under the relevant rules adopted in this rule making proceeding. Applications that are acceptable for filing would then be placed on public notice. Mutually exclusive applications received within 30 days after the public notice would be considered one processing group. We also proposed that applicants for 931 MHz paging channels with applications pending when the rules adopted herein become effective, be given 60 days from the effective date of the order in this proceeding to amend their applications to specify channels for which they seek authorization. We explained that we planned to include in the category of pending applications to which the new rules would apply, applications that have been granted, denied, or dismissed, but which remain before us due to the filing of petitions for reconsideration or applications for review. The pending applications would be placed on public notice. All pending amended applications and newly filed applications that are mutually exclusive with those pending applications and received within 60 days of the effective date of the order herein would be considered together as a processing group this one time only.

96. **Comments and Discussion.** Those entities commenting upon our proposed 931 MHz licensing procedures object to certain aspects of our proposals.[159] Most of these entities object to what they perceive as the "retroactive" aspect of our one-time licensing proposal, namely, the inclusion as part of a processing group of all "pending" applications that remain before us and newly-filed applications that are mutually exclusive with those pending applications and are received within 60 days of the effective date of the Order herein. Specifically, Paging Partners Corporation (Paging Partners) argues that applications pending before May 20, 1994 (the date our *Further Notice* was released), should be processed in accordance with rules in existence at the time those applications were filed rather than in accordance with the rules adopted in this proceeding.[160] Nevertheless, Paging Partners believes that the proposed rules may be applied to post-July 26, 1993 applications because parties to such applications were on notice of possible changes. Likewise, Premiere Page, Inc. (Premiere) objects to the application of the rules as proposed in the *Further Notice*.[161] Premiere argues that if the Commission decides to combine all applications currently on file, it should include only those applications pending before July 26, 1993, in a single processing group.[162] Premiere contends that the Commission should calculate the number of channels available at the time pending applications were initially filed to determine whether there are insufficient channels for all pending applicants, and if there are fewer channels available than applicants, the Commission should process mutually exclusive applications in accordance with its present procedures.[163] Pronet, Inc. (Pronet) asserts that the Commission should reject the proposed 931 MHz processing procedures as being both violative of Section 405 of the Act and patently unfair as applied to applications which have been granted but are still subject to petitions for reconsideration or review. Thus, Pronet contends, grants of 931 MHz authority remain valid until the Commission issues an order pursuant to Section 405 of the Act stating otherwise. Pronet argues that the Commission should focus on resolving petitions filed against 931 MHz grants in accordance with the 931 MHz licensing procedures as initially established by the Commission.[164]

97. Skytel Corporation (Skytel) claims that the application of the processing rules as proposed is contrary to Congressional intent, judicial precedent, and Commission decisions.[165] Tri-

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[157] *See* new Section 22.929(c).

[158] *See* McCaw Reply Comments at 6; Southwestern Bell Comments at 3-4; AirTouch Communications Comments at 3.

[159] Comments on the 931 MHz paging rule changes were filed by: AirTouch Paging; Alpha Express, Inc. (Alpha); Ameritech Mobile Services, Inc. (Ameritech); Comp Comm, Inc. (Comp Comm); Metrocall, Inc.; Paging Partners Corporation (Paging Partners); Paging Network, Inc. (PageNet); Personal Communications Industry Association (PCIA); Premiere Page, Inc. (Premiere); Priority Communications, Inc. (Priority); Pronet, Inc.; SkyTel Corporation (SkyTel); SMR Systems, Inc. (SSI); Source One Wireless, Inc. (Source One); and Tri-State Radio Co. (Tri-State). Reply Comments were filed by AirTouch Paging, McCaw, PageNet, Paging Partners, PCIA, SSI and SkyTel.

[160] Paging Partners Comments at 2-5.

[161] Premiere Comments at 4-5.

[162] *Id.* at 8.

[163] *Id.* at 7-8.

[164] Pronet Comments at 3-5.

[165] *See* Skytel Comments at 15-17.

State Radio Co. (Tri-State) contends that the Commission lacks the authority to reclassify as "pending" any 931 MHz applications that have been granted, denied or dismissed and are the subject of petitions for reconsideration or applications for review.[166] Tri-State also argues that the retroactive application of rules without examining the issues underlying the pending pleadings in relevant proceedings would violate the requirement of Section 405 of the Act and that the Commission must resolve the issues raised in pending proceedings.[167] Tri-State asserts that the retroactive application of the proposed rule changes would not satisfy judicial criteria for such action because: (1) the issue is not a matter of first impression; (2) the proposal represents a dramatic departure from existing procedures; (3) the licensees involved have relied extensively on license grants already made; (4) applicants with applications already on file or granted would be substantially burdened; and (5) no statutory interest exists to support the proposal.[168] Alpha Express, Inc. (Alpha) contends that the application of the proposed rule changes to those applications already processed would operate in the same manner as an *ex post facto* law, violate due process of law, and contradict concepts of orderly and fair licensing.[169] Further, Alpha argues that because the proposed rule changes do not subject all non-final grants to further proceedings, but just 931 MHz grants are so subjected, these rule changes result in a dissimilar treatment of licensees violative of constitutional equal protection laws and cases.[170]

98. After having reviewed the comments and reply comments in this proceeding, we have decided to follow the general pattern for processing 931 MHz paging applications which we proposed in our *Further Notice*. The confusion and uncertainty surrounding the old procedures for processing these applications require a rational "fresh start" pursuant to clearly articulated rules. Thus, we shall require applicants to specify the channel for which they seek authorization and the channel requested must be deemed available under the rules adopted in this rule making proceeding. Ordinarily, applications that are acceptable for filing will be placed on public notice and mutually exclusive applications received within 30 days after the public notice would be considered one processing group. *See* new Section 22.541 of our Rules. Nevertheless, all applicants that have applications pending when the rules adopted herein become effective will be given 60 days from the date those rules become effective to amend their applications to specify channels for which they seek authorization. Although we proposed to include in the category of pending applications to which the new rules would apply applications that have been granted, denied, or dismissed, but that remain before us due to the filing of petitions for reconsideration or applications for review, we agree with the commenters that, to the extent possible, all of these cases should be decided under the existing rules. Because of the ambiguous and confusing nature of our existing rules and related practice and precedent, however, it may not be possible to resolve some of these cases under the existing rules. In such cases, we see no alternative but to return the applications, even if initially granted, to pending status on the grounds that granting, denying, or dismissing applications pursuant to such ambiguous and confusing rules could only lead to reversal, regardless of what action we take. In this more limited category of cases, we will process the pending applications under the new rules.

99. To effectuate this procedure, we instruct the Chief, Common Carrier Bureau, to act on all pending petitions for reconsideration of 931 MHz paging applications prior to the effective date of the new rules. Similarly, the Chief, Common Carrier Bureau, is instructed to prepare for Commission action the proposed resolution of any such pending applications for review so that they can be acted upon by the Commission prior to the effective date of the new rules.[171] To the extent these cases can be resolved under existing rules, they should be. To the extent they cannot, because of the ambiguity and confusion of the rules and associated practice and precedent, the applications, whether previously granted, denied, or dismissed, should be returned to pending status.[172] Should settlement agreements be filed in these cases prior to such action, we encourage the Bureau to look favorably on such settlements, assuming they otherwise serve the public interest.

100. Contrary to the views of some commenters, applying our new rules to pending applications, including those that have been previously granted but are subject to reversal because they cannot be resolved under the existing rules, does not constitute retroactive rule making. The fact that a new rule "is applied in a case arising from conduct antedating the [rule's] enactment" or "upsets expectations based in prior law" does not make it retroactive. *Landgraf v. USI Film Products*, 114 S. Ct. 1483, 1499 (1994). Rather, a rule is retroactive only if it "attaches new legal consequences to events completed before its enactment." *Id. Accord, Chemical Waste Management, Inc. v. EPA*, 869 F.2d 1526, 1536 (D.C.. Cir. 1989). ("It is often the case that a business will undertake a certain course of conduct

[166] Tri-State Comments at 8-9.

[167] *Id.* at 9-10.

[168] *Id.* at 13-17.

[169] Alpha Comments at 6-7.

[170] *See* Alpha Comments at 8-9.

[171] The rules adopted in this *Report and Order* take effect on January 1, 1995. If the Commission or the Bureau have not acted upon the pleadings described above by the date that the rules adopted herein are effective, we shall stay the effect of new Section 22.541 of our rules on 931 MHz applications and also stay the special one-time filing procedure for all pending applications until the Commission or the Bureau have issued any necessary orders dealing with those pleadings.

[172] In cases where applications that have been granted are returned to pending status, the Bureau should grant interim operating authority to the prior grantee, as appropriate.

based on the current law, and will then find its expectations frustrated when the law changes. This has never been thought to constitute retroactive rule making....")[173] In this regard, it is well-established that the Commission may apply new rules to pending applications.[174] The fact that an application remained pending because of petitions for reconsideration or applications for review does not alter the Commission's authority in this regard. Until action on an application is final, processing has not been completed, and rule changes applied to that application are not retroactive.

101. **Proposal**. We proposed that the applications amended pursuant to our one-time filing procedure be subject to the competitive bidding process if they are initial applications, but also asked for comment on whether we should use lotteries for those applications.[175] We noted that, pursuant to our *Second Report and Order* in *Implementation of Section 309(j) of the Communications Act*, 9 FCC Rcd 2348 (1994) (*Second Report*), mutually exclusive applications for specific channels all of which are accepted for filing after July 26, 1993, will be subject to the competitive bidding process. Further, we noted that the *Second Report* stated that as a general rule we will regard mutually exclusive applications to modify existing licenses as not subject to competitive bidding. We asked for comment on the issue of whether modification applications that are mutually exclusive with initial applications should be treated as initial applications and be subject to competitive bidding. We proposed to consider the following applications to be "initial" applications: (1) an application anywhere for a new channel, or (2) an application to locate a new facility more than two kilometers (1.2 miles) from any existing facility operating on the same channel. A 931 MHz paging application would be considered to be a modification of an existing system only if (1) it proposes only new locations two kilometers (1.2 miles) or less from a previously authorized and fully operational base station licensed to the same licensee operating on the same channel; or (2) the application is for a change of location within two kilometers (1.2 miles) of an existing station licensed to the same licensee on the same channel; or (3) the application proposes a technical change that would not increase the service contour. We also asked whether we should use first-come, first-served procedures to process 931 MHz modification applications in cases in which we conclude that the use of auctions would not be legally permissible or otherwise appropriate.[176] Under the first-come, first-served procedure, only modification applications received on the same day would be deemed mutually exclusive. Consistent with the Omnibus Budget Reconciliation Act, such applications would be designated for comparative hearing to determine which modification application should be granted.

102. **Comments and Discussion.** The majority of commenters disagree with our proposed definition of the category of modification or expansion application which should be treated as an initial application and thus would be subject to competitive bidding with mutually exclusive initial applications. Most commenters were concerned that the adoption of such a definition would subject too many applications to auctions and would hinder the efficient and economical expansion of paging systems, especially wide-area systems.[177] With respect to the two kilometer limitation, Source One Wireless, Inc. and Paging Partners suggest that a modification application should be considered to be the equivalent of an initial application only if it plans to locate a new facility more than 20 miles from one of its existing facilities operating on the same channel.[178] Priority Communications, Inc. (Priority), Skytel, SMR Systems, Inc. (SSI), and McCaw Cellular Communications, Inc. (McCaw) recommend that an expansion or modification application should be viewed as an "initial" application if it is more than 40 miles from one of its existing facilities operating on the same channel.[179] SSI suggests that we should use a maximum distance that is roughly twice the expected reliable service range for base stations licensed at the equivalent of 1000 Watts at 1000 feet, which would be 64 kilometers or 40 miles for 931 MHz paging licensees.[180] Skytel claims that Section 22.525(b) of the Commission's Rules defines an "initial' application as one for facilities more than 40 miles from an existing station.[181]

103. Metrocall, Inc. (Metrocall) argues that applications subject to auctions should include only those that effectively

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[173] *See also Bowen v. Georgetown University Hospital*, 488 U.S. 204, 216-225 (1988) (Scalia, J. concurring).

[174] *See, e.g., United States v. Storer Broadcasting Co.*, 351 U.S. 192 (1956); *Hispanic Information and Telecommunications Network v. FCC*, 865 F.2d 1289 (D.C. Cir. 1989).

[175] Section 6002(e) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993) (Budget Act), gives the Commission discretion to use the lottery procedure instead of competitive bidding procedures for licenses where applications were accepted for filing by the Commission before July 26, 1993. Further, the Budget Act allows post-July 26, 1993 applications and pre-July 26, 1993 applications that are mutually exclusive to be processed by lottery procedures.

[176] See footnote 9.

[177] *See, e.g.*, Metrocall, Inc. Comments at 5; Personal Communications Industry Association (PCIA) Comments at 6; Skytel Comments at 13; Source One Wireless, Inc. (Source One) Comments at 2-3; Paging Partners Comments at 5-6; Ameritech Mobile Services, Inc. Comments at 7-9; Pronet Comments at 7-8; Pagenet Comments at 15-16.

[178] Source One Comments at 2-3; Paging Partners Comments at 5-6.

[179] Priority Comments at 4; SMR Comments at 5; Skytel Comments at 12-15; McCaw Reply Comments at 10.

[180] SSI Comments at 5.

[181] Skytel Comments at 12-15. Section 22.525(b) of the Rules states, *inter alia*, that an existing 931 MHz licensee requesting a one-way channel will be deemed to be requesting an additional channel for its existing station if its proposed base station is less than 64 kilometers (40 miles) from its existing 931 MHz base station.

constitute applications for new service, such as requests for new channels or for facilities with non-overlapping service areas.[182] Metrocall observes that in paragraph 37 of its *Second Report and Order in PP Docket No. 93-253, supra*, the Commission stated that any modification applications subject to auctions should be limited to those "so different in kind or so large in scope and scale" as to effectively constitute applications for new services. 9 FCC Rcd 2348, 2355 (1994). Comp Comm opposes the proposed two kilometer definition of an "initial" application, finding it arbitrary and lacking in technical merit. Comp Comm asserts that the current Part 22 definition of a 931 MHz paging service contour includes a minimum radius of 20 miles.[183] Comp Comm also notes that, under Section 22.16(e) of the Commission's Rules, an application for a new transmitter site is considered to be a "fill-in" application (*i.e.*, a "modification" rather than an "initial" application) if the proposed service area is at least 50 percent encompassed by existing authorized service area. Further, Comp Comm observes that for 931 MHz paging, the separation between the centers of two circles each having a 20-mile radius, with 50 percent overlap between them, is 26.0 km (16.2 miles). In light of these factors, Comp Comm argues that a separation of 26 kilometers rather than 2 kilometers should be used to differentiate an initial from a modification application.[184] Ameritech Mobile Services, Inc. (Ameritech) concurs with Comp Comm's 50 percent overlap analysis, noting that an existing licensee that is forced to abandon a transmitter site may find that it is included in an auction for a new site if that site is more than two kilometers away.[185] Ameritech also observes that Section 22.16(b)(2) of the Commission's Rules states that: "Applications are considered to be requesting initial channels if less than 50 percent of the proposed reliable service area contour overlaps an existing contour."[186]

104. In its Reply Comments, McCaw suggests that a long-term solution to the problem of providing flexibility to allow 931 MHz paging licensees to make minor changes to their systems and yet expand operations to accommodate natural growth is to license 931 MHz paging facilities on a market-defined service area determined by the Commission.[187] AirTouch Paging states that there appears to be a general consensus that the Commission should adopt market area licensing in lieu of the current transmitter-specific type of licensing.[188]

105. We would like to consider market area licensing for paging operators in a future rule making proceeding. Until such time, however, we shall define an initial application which is subject to competitive bidding as one which proposes: (1) to use a new channel anywhere and (2) to locate a new facility more than 2 kilometers from any existing facility operating on the same channel. We believe that the 2 kilometer distance should allow a licensee who loses its transmitter site to find another one nearby. Further, if a licensee seeks to expand its service area by using a transmitter on the same channel as its existing station but more than 2 kilometers from its present transmitter site, we believe that it should be subject to an auction with other initial or expansion applications. We view such proposals to be new ventures which generally would be subject to competitive forces. Until we are able to investigate more fully the efficacy of a market-licensing plan, we believe that the expansion of paging systems, should be subject to competitive bidding. This way, the new venture will go to the party which most highly values the spectrum in that area. We also conclude that we will use the first come, first served procedure to accept 931 MHz modification applications for filing when the application involved cannot qualify as an "initial' application as defined above. Thus, for example, a proposal to locate a new facility less than 2 kilometers from an existing facility operating on the same channel would be subject to the first-come, first-served procedure. Under the first-come, first-served procedure, only mutually exclusive modification applications received on the same day would be entitled to comparative consideration. Consistent with the Omnibus Budget Reconciliation Act, those applications would be designated for comparative hearing to determine which modification application should be granted.

CONCLUSION

106. In this Report and Order, we revise Part 22 of our Rules. This comprehensive review and revision of our Rules governing the Public Mobile Services culminates several years of effort on the part of the Commission and the telecommunications industry. This rewrite and update of Part 22 will serve the goal of streamlining our licensing procedures to allow Public Mobile Services licensees greater flexibility in providing service to the public.

ADMINISTRATIVE MATTERS

Final Regulatory Flexibility Analysis

107. **Need and purpose of this action.** This Report and Order revises Title 47, Part 22 of the Code of Federal Regulations to eliminate unnecessary information collection requirements and, wherever possible, provide greater flexibility to carriers, while at the same time promoting the public interest. The objective of this proposal is to provide effective and adaptive regulation for communications.

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[182] Metrocall Comments at 8.

[183] Comp Comm Comments at 6.

[184] *Id.*

[185] Ameritech Comments at 7-9.

[186] *Id.* at 8.

[187] McCaw Reply Comments at 11.

[188] AirTouch Paging Reply Comments at 7, citing its Comments at 8-13, PCIA's Comments at 7-8, PageNet's Comments at 7-8 and Premiere's Comments at 9.

108. **Summary of issues raised by the public.** Several commenters suggested modifications to some of the Commission's proposals. As a result of these comments, we have made some modifications to those proposals as appropriate.

109. **Significant alternatives considered.** The Notices and Further Notices of Proposed Rule Making in these proceedings offered numerous proposals. The commenters supported the majority of the proposed changes. Several commenters suggested modifications to some of the Commission's proposals. The regulatory burdens we have retained are necessary to carry out our duties under the Communications Act of 1934, as amended. Several of the commenters suggested that a market area licensing system be substituted for the transmitter by transmitter licensing used in some of the services. Because we did not initially propose this in the *Notice*, however, market area licensing is beyond the scope of this proceeding. We will continue to examine alternatives in the future with the objective of eliminating unnecessary regulations and minimizing any significant economic impact on small business entities. A copy of the Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

ORDERING CLAUSES

110. Authority for the rule changes adopted herein is contained in Sections 1, 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303(r).

111. Accordingly, IT IS ORDERED That Part 22 of the Commission's Rules IS HEREBY AMENDED as discussed herein and as shown in Appendix B.

112. IT IS FURTHER ORDERED That the rule changes made herein WILL BECOME EFFECTIVE on January 1, 1995.

113. IT IS FURTHER ORDERED That the rule making proceedings in CC Docket Nos. 92-115, 94-46, and 93-116 ARE HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

DETAILED DISCUSSION OF PART 22 RULE AMENDMENTS

In this appendix, we summarize the record and discuss the non-controversial but substantive rule revisions, including those involving procedural changes, and some of the rule revisions involving only editorial changes. We also provide additional detail on some of the controversial rule revisions. In many instances, we incorporate suggestions of the commenters into the final rules. Some rule changes are made to conform the new rules with rules adopted in other rule making proceedings that were pending at the time of the Notice of Proposed Rule Making (NPRM) or to finalize proposals in proceedings that we commenced during the pendency of this proceeding. Still other changes are the consequences of amendments to the Communications Act of 1934, as amended (the "Act"), that were enacted during 1993. Although we dispose of most minor matters briefly, we have nevertheless carefully considered the comments and arguments in the record. In this appendix, we refer to the previous rules as "old," the rules we are adopting herein as "new," and the rules set forth in the NPRM as "proposed." Appendix B sets forth the amendatory language, changes to Part 1, and new text of Part 22 in its entirety. Appendix C is a table cross-referencing the new rules with the old rules.

General Organization

In our rewrite, we depart significantly from the previous organization of Part 22. We attempt, to the extent feasible, to locate general rules applying to two or more of the Public Mobile Services in new Subparts A, B and C. Unless otherwise stated in a particular rule, one should assume that all rules in these first three subparts apply to all Public Mobile Services. In the case of Subparts A and B, we retained section numbers for the corresponding old rules, adding 100 in the case of Subpart B. For example, old Section 22.19 became new Section 22.119. We did this so that the general rules appear in the same approximate order as before. Many people in the industry who work with these rules are familiar with the old numbers. We hope these measures will ease the transition.

We no longer consider developmental applications and authorizations to be part of a "Developmental Service" because most developmental authorizations are not issued for the purpose of developing a new public mobile service, but are issued for trial operations within one of the established Public Mobile Services. We located all the rules concerning developmental application procedures in new Subpart D. Each of Subparts E, F, G, H and I covers a single public mobile service, and unless otherwise stated in a particular rule, the reader should assume that rules in a particular subpart apply only to the particular service that subpart covers. We have tried to reduce the amount of cross referencing that occurred in the old rules between the service specific subparts, *e.g.*, between the

Rural Radiotelephone Service and the Paging and Radiotelephone Service.

Public Mobile Service Titles

We proposed to retitle several of the Public Mobile Services. For example, we proposed to rename the "Domestic Public Cellular Radio Telecommunications Service" as the "Cellular Radiotelephone Service". Some commenters dislike the proposed titles. In general, these commenters express concern that the new titles reflect an intent to place substantive limits on how the radio services may be used. They suggest that we adopt names for the services that encompass all uses of the services.

The foregoing arguments are without merit. The titles of the Public Mobile Services are merely short labels describing the main distinguishing characteristics and principal uses of those services. In recent years, we have increased the flexibility licensees have to use facilities licensed in these services for many purposes in addition to the main or original purpose. Nevertheless, we do not believe it is necessary or desirable to label the individual services with lengthy titles intended to encompass all conceivable uses. The names we proposed to use, are, for the most part, terms commonly known and used by the general public. For example, we proposed to replace the very general sounding title "Public Land Mobile Service" with "Paging and Radiotelephone Service." We believe that most people know what "paging" is, but they might not know what is meant by "land mobile one-way tone, voice and alphanumeric signaling," even though the latter may be more inclusive. Most importantly, we emphasize that the titles of the individual Public Mobile Services do *not* in any way place substantive limits on how these radio services may be used. Any such limits would be clearly stated in rules governing the services and would not be imposed by the names of the services. We continue to believe that the proposed titles are better than either the old titles or the alternatives suggested. Therefore, we adopt the new service titles as proposed.

The New Rules

In the following pages, we address each of the new rules in sequence.

Subpart A - Scope and Authority

§ 22.1 Basis and purpose.

New Section 22.1 replaces old Section 22.0(a) and (b) and is required by 5 U.S.C. §553(c) whenever an entire rule part is established or rewritten. We adopt it as proposed.

§ 22.3 Authorization required.

New Section 22.3(a) tracks the language in Sections 301, 308, and 309 of the Act. See 47 U.S.C. §§301, 308, and 309. Pactel Paging and twenty other Part 22 licensees joined together to file comments and reply comments. We refer to this group herein as the "Joint Commenters." Joint Commenters propose that the word "legal" be added to the second sentence of this rule section, indicating that applicants must be qualified in regard to citizenship, character, financial, technical, "legal" and other criteria. We disagree. This word is not in the language of the Act and is not necessary in this rule section.

§ 22.5 Citizenship.

This rule retains the language in old Section 22.4 which implements Section 310 of the Act (47 U.S.C. § 310). Joint Commenters suggest adding a paragraph under new Section 22.5(b) indicating that the Commission does not grant authorizations in the Public Mobile Service to any partnership that has an alien general partner or any limited partnership in which an alien limited partner is not adequately insulated from participation in the management or control of the entity. We reject this suggestion. Commission precedents are clear that the alien proscriptions of Section 310 apply to partnerships. *See Moving Phones Partnership L.P. v. FCC*, 998 F.2d 1051 (D.C. Cir. 1993). *See also Wilner & Scheiner*, 103 FCC 2d 511 (1985), *modified on recon.* 1 FCC Rcd 12 (1986). Therefore, we need not incorporate the suggested language into the rule.

§ 22.7 General eligibility.

The proposed rule was intended to restate old Section 22.4(a). Joint Commenters, noting that the proposed rule states that applications may be granted only if there are "sufficient" channel assignments available to enable the applicant to render a satisfactory service, assert that this language appears to introduce a new legal standard not reflected in existing rules or case law. Furthermore, they are concerned that the phrase "satisfactory service" could be interpreted in various ways and could result in litigation.

First, we replaced the phrase "eligible to apply for authorizations" with "eligible to hold authorizations," because an applicant could be found ineligible after applying. Second, the phrase "satisfactory service" appears in old Section 22.4(a)(2) and thus would not constitute a substantive change. We agree, however, that this phrase and the word "sufficient" could both be subject to misinterpretation. Moreover, upon reflection, we realize that the issue of spectrum availability is misplaced in this section. The purpose of new Section 22.7 is to state general qualifications each applicant must have (*e.g.*, it must be a common carrier) to be eligible to hold an authorization issued under this part. The matters of availability of spectrum for a proposed facility, and whether grant of an authorization for that facility would serve the public interest, convenience or necessity are important, but they do not reflect upon an applicant's basic qualifications or eligibility to hold a license. Accordingly, we removed these two concepts from this rule section. We note that the latter consideration concerning the public interest is already stated in new Section 22.132(a)(1), which is the appropriate location for it. The effect of the former consideration was to indicate that the Commission would not grant an application if

there was no available channel. We moved this provision to new Section 22.128.

§ 22.99 Definitions.

In the NPRM, we proposed to update, add, and remove definitions for Part 22. We intentionally numbered this section as § 22.99 so that it would always be the last section in Subpart A, and thus be easy to find. We emphasize that the definitions in this section serve only to explain the meaning of terms as we use them in Part 22. We have endeavored to avoid, as much as possible, embedding restrictions or technical specifications within the definitions. This definitions section is intended to be an informative rule section. The comments suggest additions and changes to some of our proposed definitions. Our decisions with regard to these suggestions follow.

Airborne station. GTE Service Corp. (GTE) argues that the proposed definition, which refers to use on aircraft in flight, could be interpreted as making use in aircraft on the ground unauthorized. It asserts that there is no rationale supporting such a limitation and it therefore recommends deleting the phrase "in flight."

The Public Mobile Services are land mobile services, and all authorized public mobile stations, including airborne stations, may be used on the ground. The characteristic of airborne mobile stations that distinguishes them from all other public mobile stations is that they are also authorized and designed to be used on aircraft while in flight. By contrast, use of cellular mobile stations on aircraft in flight is prohibited. To remove the phrase "in flight" as GTE suggests would strip the definition of its essential meaning, because all public mobile stations, including even cellular mobile stations, are authorized to be used on an aircraft while it is on the ground. Nevertheless, to eliminate any possible misinterpretation we added the phrase "or on the ground" to the definition.

Assignment of authorization. McCaw Cellular Communications, Inc. (McCaw), Metrocall of Delaware, Inc. (Metrocall), Joint Commenters, and BellSouth Corp. and BellSouth Enterprises, Inc. (BellSouth) suggested that the definition of "assignment of authorization" should not include "transfer of control" because they assert that these are two legally distinct transactions.

We agree. We use the term "assignment of authorization" generally to refer to the transfer of a Public Mobile Services authorization from one party to another. In this regard, we note that there are "full" assignments, where the licensee of a facility changes, and "partial" assignments, where a licensee transfers the authorization for some, but not all, of the facilities of a station. In the case of a full assignment, we issue a new authorization bearing the same call sign, but the name of the new licensee (the assignee). In the case of a partial assignment, we issue a new authorization to the assignee bearing a different call sign, and the assignor retains the existing call sign. We use the term "transfer of control" to refer only to the transfer of a Public Mobile Services authorization by transfer of control (such as by the sale of stock or other ownership) of the licensee. An assignment of authorization occurs when the authorization moves from one entity to another. In a transfer of control, the licensee remains the same, but the owners of the licensee change. *See* Stephen Sewell, *Assignments and Transfers of Control of FCC Authorizations under § 310(d) of the Communications Act of 1934*, 43 Fed. Comm. Law Journal 277, 285 (1991).

Authorization. The Joint Commenters point out that the proposed definition of the term "authorization" is limited to a written instrument to operate a station. They suggest that the definition be revised to indicate that the Commission also gives oral authority, and that authorizations convey authority to construct a station.

Normally, all Public Mobile Services authorizations are in written form, and the proposed definition reflects this. However, we agree that the Act does not restrict authorizations to written instruments and that on some occasions we have issued oral authorizations to operate Public Mobile Services stations. Therefore, we are revising the definition of "authorization" to reflect this fact. In regard to construction authority, we note that although Public Mobile Services authorizations convey authority to construct, our rules generally allow station construction prior to the issuance of an authorization (see new Section 22.143). Furthermore, if we were to add "authority to construct" to our definition of the term "authorization" as Joint Commenters suggest, others might infer that an authorization *must* be issued prior to construction. Section 301 of the Act (47 U.S.C. § 301) mandates that a license is necessary to "use" or "operate" stations, including Public Mobile Services stations, but does not require such for construction. Section 319 of the Act (47 U.S.C. § 319) mandates generally that a construction permit must precede the issuance of a license, but Subsection (d) of that section specifically exempts stations licensed to common carriers from that requirement, unless the Commission determines that the public interest, convenience and necessity would be served by requiring construction permits. In view of these considerations, we find that it is unnecessary and potentially confusing to add a reference to construction authority to our definition of "authorization."

Authorized bandwidth. Our proposed definition for the term "authorized bandwidth" reflects the fact that, in the Cellular Radiotelephone Service and the Air-ground Radiotelephone Service, channels are assigned in blocks rather than individually. Our primary concern in limiting emissions to prevent adjacent channel interference is with emissions that fall outside of the channel for stations that are assigned spectrum on a channel-by-channel basis, and with emissions that fall outside the channel block, for stations that are assigned spectrum on that basis. Within such a block assignment, if adjacent channel interference

occurs, the authorized station interferes with itself, a situation the licensee could usually be expected to correct without our intervention. For equipment authorization purposes, however, we generally establish limits for emissions falling outside of the normal bandwidth of the emission, because a particular type of transmitter might be used with a single channel assignment or a block assignment. Thus we need a term to define "the assigned channel or channel block." However, the term "authorized bandwidth" is already used in other parts of our rules (see, *e.g.*, Section 5.103 of our rules), and in these other parts it usually refers to the width of the authorized emission, not the width of the spectrum which is assigned. To avoid confusion this may cause, we added the term **"authorized spectrum"** with the definition we proposed for "authorized bandwidth." In addition, we retain the term "authorized bandwidth," but define it to mean the same thing that it usually means in other parts of our rules.

Base transmitter. Arthur K. Peters, Consulting Engineers (AK Peters) suggests that the definition of "base transmitters" be expanded to include the provision of service to pagers because they are clearly served by base transmitters. We agree that a reference to pagers is appropriate.

Cellular Geographic Service Area (CGSA) and Extensions. GTE proposes that we add our definitions of these Cellular Radiotelephone Service terms to this section. We agree that general definitions of these terms may frequently be sought by persons concerned with cellular matters and that adding them to this section is appropriate. The general definitions we are adding also contain references to the rule sections in Subpart H where more detailed explanations and additional requirements may be found.

Cellular System. Joint Commenters argue that the proposed definition does not distinguish a cellular system from other personal communications systems. It recommends that we reference the specific frequency ranges allocated to the Cellular Radiotelephone Service. We disagree. The frequency ranges in which a communications system operates do not make it a cellular system. A cellular system could operate just as well in many different frequency ranges. Likewise, communications systems that are not cellular systems could operate in the spectrum allocated to the Cellular Radiotelephone Service (see new Section 22.901(d)). The distinguishing characteristics of a cellular system are related to its engineering design or "architecture," not the portion of the spectrum in which it operates. Our definition incorporates the principal cellular design characteristics including high-capacity, wide-area, low transmitting power, automatic hand-off and most importantly, frequency reuse.

Channel. In the NPRM, we proposed to define channel as "[t]he portion of the electromagnetic spectrum assigned by the Commission for one emission. However, in certain circumstances, more than one emission may be transmitted on a channel. See, for example, § 22.161 and § 22.757, *et seq.*" BellSouth asserts that the reference to Section 22.161 is unclear, and the reference to Section 22.757 and the sections following is incorrect. It also recommends that we include an additional sentence that clarifies that each half of a channel pair is itself a channel, but that the pair is assigned as a unit. We agree with this latter point and added a definition for the term **"channel pair"**. We also deleted the reference to Section 22.757, *et seq.* because BETRS is authorized as a single emission per channel (although that single emission is a multiplexed digital emission carrying up to four audio channels). However, we retained the reference to Section 22.161, which is the rule that allows stations using amplitude compandored single sideband (ASSB) to transmit several separate emissions within a single channel.

Dead spots. The NPRM defined dead spots as "[s]mall areas within a protected service area where the field strength is lower than the minimum level for reliable service." The Joint Commenters suggest that we eliminate the word "protected" from the definition as unnecessary. We agree.

Dispatch service. Bell Atlantic Companies (Bell Atlantic), GTE, and others recommend that we retain the definition of dispatch service that is already in our rules. In particular, GTE suggests that we codify the definition of dispatch service adopted in GEN Docket No. 87-390. We agree. The definition of dispatch service in the old rules was inadvertently omitted in the NPRM.

Equivalent isotropically radiated power (EIRP). The NPRM defines EIRP of a transmitter as the power at the input terminals of a reference isotropic radiator that would produce the same maximum field intensity. BellSouth recommends that an additional sentence be added which explains that an isotropic radiator is a theoretical lossless point source of radiation with unity gain in all directions. We agree that the definition of EIRP is improved by adding this sentence. We also added the traditional wording that explains how EIRP may be calculated.

Fill-in transmitter. McCaw and Joint Commenters state that maintaining two different definitions of "fill-in transmitter," one for the Cellular Radiotelephone Service and the other for the Paging and Radiotelephone Service, is confusing. Joint Commenters recommend that cellular system expansion transmitters be called "build-out transmitters" instead of fill-in transmitters and be defined separately. With regard to the Paging and Radiotelephone Service, Bell Atlantic and United States Telephone Association (USTA) suggest that the definition should state that a fill-in transmitter may not extend the service area or interfering contour beyond previously authorized contours.

We agree with McCaw and Joint Commenters that current use of the term "fill-in transmitter" to mean different things in different services is confusing. The traditional meaning of this term is a transmitter that is added in a paging system to improve reception in a dead spot. Over the years, however, the term

"fill-in transmitter" came to be used to describe transmitters added to a paging system to expand the coverage of that system, provided that there was a significant overlap (*e.g.*, 50%) with existing service areas. The reason this occurred is that our rules have provided that applications for fill-in transmitters did not have to contain traffic loading studies or other additional channel justification (see old Section 22.16(e)). This created an incentive to call system expansion transmitters "fill-in transmitters" in order to avoid the additional channel showings. Later, in the cellular service, it became common to refer to the process of adding cell sites within a market as "filling in" that market. This usage further evolved into our definition and use of the term "Five year fill-in period" to describe the period during which an initial cellular licensee has an exclusive right to expand its system within the market.

We are defining the term "fill-in transmitter" to have its original meaning. We believe that removal of the requirement for traffic loading studies and clarification of the rules that govern assignment of additional channels will reduce the tendency to misuse the term "fill-in transmitter" to describe system expansion transmitters. In this regard, we agree with Bell Atlantic and USTA that the definition should indicate that fill-in transmitters are not added to a system for the purpose of expanding a system. Therefore, we have added language to make this clear.

Furthermore, we agree with the suggestion made by Joint Commenters that cellular expansion should be named "build-out" rather than "fill-in." Therefore, for purposes of the Cellular Radiotelephone Service, we define the term **"Five year build-out period"** to mean what we have previously called the "five year fill-in period". As a related matter, BellSouth recommends that the definition for this period indicate the exclusive nature of an initial cellular system licensee's expansion rights during its five year build-out period. We agree and are adding language to this effect.

Initial cellular applications. Over the past decade, our rules for the Cellular Radiotelephone Service have focused on procedures and requirements governing applications for authority to operate new cellular systems. These applications for new systems are or have been subject to various rules and policies that do not or should not necessarily apply to subsequent applications for those systems (such as for modifications). As there is frequently a need in Part 22 to refer specifically to applications for new cellular systems, including applications to expand existing systems into unserved area during Phase I and Phase II, in CC Docket 90-6 we adopted the term "initial applications" to refer to these applications. The NPRM proposed that this term be defined as "applications for authority to operate the first cellular system on a channel block in a cellular market." However, this wording would appear to exclude applications for authority to operate new cellular systems in unserved area, which we did not intend. Accordingly, we revise the wording to refer to the establishment of a new station or system, regardless of whether it is first in a market. BellSouth recommends that we add the word "cellular" because the definition has been specific to the cellular service. We agree. In light of our recent decisions to employ competitive bidding procedures to select from among mutually exclusive initial applications, we are defining what we consider to be initial and modification applications for the purpose of eligibility for competitive bidding procedures, not only for the cellular service but also for the other Public Mobile Services as well. However, the definitions will be different depending upon the way the service is licensed. BellSouth also suggests that we add a term to describe applications related to existing cellular systems (*e.g.*, modifications, transfers, etc.). We did not add such a term because, in Part 22, we generally refer to these other applications either specifically (*e.g.*, "applications for modification," "applications for assignment of authorization") or generally by using the qualifying phrase "other than initial applications."

Partitioned cellular market. The NPRM proposed a definition for the term "Partitioned RSA," which has been used informally to describe the contractual splitting of Rural Service Areas (RSAs). BellSouth believes that the definition should not be restricted to RSAs, but rather broadened to include any type of cellular market. It recommends that the definition include a sentence reading: "Partitioned markets are considered separate cellular markets as defined in Section 22.909."

Some partitioned RSAs resulted from settlement agreements during initial licensing. Others have been created subsequent to grant of an initial license. Unlike licensees in some of the MSAs, RSA licensees have not had an obligation to cover 75% of the area or population of their markets. In certain cases, RSA licensees have concluded that it may not be viable, for various reasons, to expand their systems to cover portions of their RSA within their five-year build-out period. Rather than allowing these portions to go unserved, however, they have applied for authority to operate facilities there and upon receiving the authorizations have then assigned them to another party (a partial assignment). Although an RSA licensee cedes away a portion of its market by doing this, it still benefits by its compensation from the partial assignment. We have allowed this practice because it results in the public receiving service in the transferred area faster than it otherwise would and because the compensation that the RSA licensee receives may be applied toward building cellular facilities in the portion of the market it retains. However, rather than forcing RSA licensees to follow the two-step procedure just outlined (step one - receive authorization, step two - assign it), which wastes our staff resources, we allow the assignee to apply directly to us for a new cellular system in the ceded portion of the market upon evidence that the partitioning contract exists (see old Section 22.31(f)(2)). This achieves the same result with only one step.

Although the old rule applied only to RSAs, and most MSA licensees have been obligated to serve most of the area or population of their markets themselves, we have nevertheless

allowed at least one MSA licensee to partition its market. Furthermore, we have decided here to remove the 75% market coverage requirement (see discussion of new Section 22.911, *infra*). Therefore, we agree with BellSouth that the definition concerning partitioning should be broadened to include any type of cellular market. However, BellSouth's suggested language indicating that the partitions are considered separate markets is incorrect. The resulting systems are separate systems, with different authorizations and call signs, but the market itself remains the same. All systems on a channel block in a market have the same five year build-out period.

Radio Telecommunications Services. We are adding the word "paging" because this encompasses simple one way signaling, which might not be considered radiotelegraph service if no message is transmitted.

Station. GTE, Claircom Communications Group, L.P. (Claircom), Paging Network, Inc. (PageNet) and others propose that we should define the term "station" because it is used throughout Part 22 but is never defined. We agree. Therefore, we included the definition of station contained in the Act.

Subpart B - Application Requirements and Procedures

§ 22.101 Station files.

We proposed to codify our long-standing policy that station files at the Commission constitute the official record for the station. We indicated that the purpose of the proposed rule is to inform applicants and licensees that the Commission's unofficial records or data bases are not official records and that reliance on these secondary sources neither confers rights nor deprives parties of their rights. *See, e.g., Mobilfone of Northeastern Pennsylvania, Inc.*, 5 FCC Rcd 7414 (Com. Car. Bur. 1990).

Some parties oppose the proposal to make the station files the only official record of Part 22 stations. For example, the Federal Communications Bar Association (FCBA) argues that we should recognize our computer data bases of Part 22 licensing information as a co-equal official record with the existing station files and public notices. Radiophone, contends that Section 552(a)(2)(C) of the Administrative Procedure Act (5 U.S.C. § 552(a)(c)(2)) requires the Commission to provide an official data base in which station information is properly indexed before the Commission may use such information to the detriment of a licensee or applicant. Furthermore, Radiophone argues that the proposed rule is inconsistent with the text of the Part 22 NPRM, which it believes suggests that applicants should use the Mobile Services Division computer data base when preparing their technical exhibits.

While Bell Atlantic does not object to our proposal to make our station files the official record, it points out that those files are often incomplete, inaccurate, and out of date. Bell Atlantic asserts that the proposal should be revised to allow licensees to show that the station file is not accurate by providing evidence of the inaccuracy. In any event, Telocator recommends that there be no monetary forfeiture levied in the event applications, in which the applicant certifies as to the accuracy of the engineering exhibits, in fact contain errors resulting from the applicant's reliance on the computer data base. Finally, Telocator and Bell Atlantic believe that the proposed rule should be modified to allow parties to supplement official station files by submitting date stamped copies of any filing.

We continue to believe that our station files should serve as the official record for each station. We are not persuaded to recognize our computer data bases of Part 22 licensing information as official records for the following reasons. First, material in the station files exists exactly as submitted by the applicants, whereas data in the licensing computer data bases has been manually keyed in and is thus subject to keystroke and typographical errors. Although our ongoing efforts are making considerable progress in cleaning up our data bases, they still contain some incomplete, erroneous, or duplicative information. Second, the licensing data bases do not contain textual or graphical material, such as letters and pleadings, or diagrams and maps. Furthermore, we disagree with Telocator that applicants should be immune from sanctions for submitting incorrect data in an application, resulting from reliance on the Commission's data bases, private data bases, or other unofficial sources. We agree with the commenters, however, that licensees should be free to supplement or seek correction of official station files outside of the application and notification process.

We reject Radiophone's argument that the Commission's station files do not comply with the APA. The station files serve as the Commission's official files in accordance with Section 552(a)(2) of the APA (*See* 5 U.S.C. § 552(a)(2). ***See also e.g.,*** *Calument Radio*, 5 FCC Rcd 1196, 1197 (1990); *Rotkin d/b/a Northeast Communications*, Mimeo No. 2711 (Com. Car. Bur., released Sept. 23 1985); *Crico Telecommunications of San Jose*, 3 FCC Rcd 4846 (Mobile Serv. Div. 1988)). With respect to Radiophone's argument that this proposal is inconsistent with the language in the NPRM, our intent is to make our computer data bases as accurate as possible to assist applicants in preparing technical exhibits. While we allow licensees and applicants to utilize our computer data bases, all users of these data bases are cautioned that these sources are "unofficial and should not be relied on." *See* Section 0.434.(e) of the Rules (47 C.F.R. § 0.434(e)).

The NPRM provided that "applications, notifications, correspondence and other material, and copies of authorizations, comprising technical, legal, and administrative data relating to each station in the Public Mobile Services are maintained in individual station files." Joint Commenters suggest that the definition be modified by adding: "... maintained by the Commission ...." Otherwise, the rule could be misconstrued to refer to the station files maintained by the carriers. We agree and are adding the suggested phrase.

§ 22.105 Written applications, standard forms, microfiche, magnetic disks.

We proposed to revise our microfiche rule to require that all applications on standard forms (including all exhibits and attachments), regardless of their length, and any filings pertaining to a current or pending application or an existing authorization must be filed in microfiche form. We also proposed that, except in the case of emergency filings, we would require filings longer than three pages to be filed in microfiche form. We proposed these revisions to our microfiche rule for several reasons. First, we noted that we proposed to redesign our application and notification forms, significantly shortening them. We indicated that although these form changes would make some filings shorter than they currently are, we would continue to require that all applicants file their applications in microfiche form because of constraints in our file storage space and microfiching resources. In addition, we proposed to modify our microfiche rule to require that all microfiche appear on a black background. Finally, we proposed to permit applicants to file applications on magnetic disks. We emphasized that any rules that we adopted with respect to filings on magnetic disks would not become effective until we obtain the necessary equipment to implement this process.

Most of the commenters oppose our proposal to require that all filings, regardless of length, be submitted on microfiche. They argue that such a requirement would expand the already burdensome microfiching requirements, which are borne solely by Part 22 licensees. They also argue that the proposal would be inconsistent with the terms of the Office of Management and Budget's (OMB) original approval of our microfiching requirement. The Office of Advocacy of the Small Business Administration (OASBA) argues that our proposal does not comply with the Paperwork Reduction Act, 44 U.S.C. §§ 3501-20, which was intended to reduce the paperwork burden on small business by requiring agencies to consider the least burdensome alternative. Bell Atlantic disagrees that the proposed revision of our microfiching rule is necessary because of the Commission's file storage space constraints. It argues that while the use of microfiche may be cost-effective in terms of record storage for long documents, it is not cost effective for four to five page documents. In any event, it maintains that the cost of microfiching documents greatly outweighs the minimal storage requirements for short documents. OASBA believes that the cost of starting a micrography operation is approximately $50,000, a cost that it believes would be unduly burdensome on small business.

In addition, several of the commenters argue that the Commission should not in effect eliminate the provisions of current Section 1.45, which allows parties filing opposition or reply pleadings in contested proceedings to file the microfiche copies within 15 days of the paper copies. They argue that elimination of this current grace period would adversely impact small carriers that lack in-house microfiching capabilities. In addition, Cellular Telecommunications Industry Association (CTIA) opposes the proposed elimination of the option to file microfiche copies of an application within a few days of the filing of the original application. It contends that this proposal would harm small business and does not take into account the high investment costs of microfiching equipment and possible equipment failures.

The majority of the parties support the proposal to allow applicants to submit the technical and administrative data contained in applications and notifications on magnetic disks, and they submit comment regarding the procedures for implementing the proposed format. A few commenters, however, oppose the proposal. For example, Bell Atlantic argues that use of magnetic disks would (1) make it more difficult for the public to obtain information concerning applications; (2) make it more difficult for the Commission to process information, absent strict disk format standards; and (3) not be cost effective for Part 22 filings that are under 10 pages in length. Finally, several parties propose alternatives other than electronic filing. OASBA, for example, advises the Commission to consider optically scanning all relevant application information and then placing the data on a computer or compact disk. US West/New Vector (New Vector) recommends that the Commission should be connected to a national packet data network so that carriers can examine the filings relating to neighboring systems' cell site locations and channel set information prior to designing their own systems.

After careful consideration of these comments, we continue to favor adoption of the rule as proposed. While we recognize that a requirement that all filings be submitted in microfiche form is in fact somewhat burdensome and is unpopular, such a requirement is necessary because the Commission lacks adequate file space to maintain full-size paper station files. Given that microfiching services appear to be available in every State at reasonable cost, we believe that this rule presents the best interim solution until we are able to fully implement magnetic disk and electronic filing methods advocated by many of the commenters.

We disagree with OASBA that we have failed to consider the least burdensome alternative. We are aware that applicants are already submitting almost all filings in microfiche form and we do not believe that the requirement that they submit all filings in microfiche form would impose a significant additional burden on carriers. Moreover, we are currently seeking OMB approval of this change and will fully comply with all applicable OMB requirements.

As an alternative to microfiche, we proposed to allow filings to be submitted as graphics images on magnetic disks. We believe that the option to submit Part 22 filings as images on magnetic disks could be a convenient, cost effective alternative to microfiche. The other alternatives suggested by the commenters, such as optical scanning and connection to a national data network, may also provide additional alternatives to microfiche in the near future. The Commission is currently

considering the acquisition and use of many of these technologies.

Concerning proposed Section 22.105(e), we agree that the provision of old Section 1.45 that allows the filing of microfiche copies of oppositions and reply pleadings in contested proceedings up to 15 days after the paper copies should not be contradicted in Part 22. Accordingly, we amended the introductory text to reference the exception provided by Section 1.45. We disagree with CTIA, however, that applicants should be allowed to file their microfiche copies of their applications after the original paper application. Although we have informally allowed this practice, we believe that a requirement that the microfiche and the original paper copy be filed at the same time will conserve Commission resources by eliminating the staff time now spent associating the two filings. In any event, we note that proposed rule Section 22.142 provides that *both* the paper original and the microfiche copy of filings notifying the Commission of commencement of service may be filed 15 days after service begins. Currently, they must be filed on the day service begins. Because these types of notifications constitute many of the notifications we receive, we believe that this 15-day grace period in filings will minimize the burden on applicants of having to file the original paper and the microfiche at the same time. Thus, we disagree with CTIA that our proposal will harm small business.

The NPRM proposed that all microfiche appear on a black background. In addition, the NPRM proposed that applicants be allowed to submit technical and administrative data on 3 1/2" magnetic diskettes formatted in MS-DOS 2.0 or higher. We asked for comments on the proposed format, the type of file to be used, and the data field delimiter.

NYNEX Mobile Communications Company (NYNEX) does not believe that all microfiche needs to appear on black backgrounds. It notes that currently microfiche appear on black, purple, and blue backgrounds. It maintains that in order to comply with the proposed rule, it would have to replace its equipment or ask for a waiver. NYNEX suggests that the Commission's standard should be based on legibility rather than the color of the microfiche background.

We proposed to require that microfiche appear on a black background because our experience is that a black background produces the most legible microfiche. We agree with NYNEX, however, that the standard should be that of legibility, not color. Therefore, we revise the rule to require that microfiche must appear on a black "or other legible" background. We emphasize that unreadable microfiche may render a filing unacceptable or defective pursuant to new Section 22.120(c) or new Section 22.124(b), as applicable.

The commenters generally support our proposal to allow voluntary magnetic disk data filings, and the Mobile Services Division has recently obtained the equipment necessary to implement it. In the near future, we will establish a format for such filings and obtain software to move data directly from the disks to our data bases. At this time the cellular data base is complete and the paging data base is under development, but should be complete later this year.

We are adopting the magnetic disk rule, but placing a note after paragraph (g) delaying the effective date of that paragraph until we are ready to implement it. We are also removing the requirement in paragraph (g)(2) for use of a carriage return as a data field delimiter. We are planning to use ASCII characters as delimiters but we may need to change what characters are used at some point and we do not believe that a rule making proceeding is necessary or desirable for such a minor change. Likewise, we are not specifying a graphics file format for image files in the rule. We will specify a format (by Public Notice) under which both text and images will be readable by the word processing software used throughout the Commission. Text could also be read by database software used by the staff and by programs written in programming languages used by the staff.

We also added the parenthetical expression "(FCC Form 401)" to the introductory text of the rule, as this is the main form required by Part 22. (As discussed later, we have proposed to replace FCC Forms 401 and 574 with a single application form, FCC Form 600, to be used for all mobile services and certain fixed services.) We revised the entry for FCC Form 430 in Table B-1 to reflect the correct title of that form and to clarify that, for the Public Mobile Services, it is required only in conjunction with FCC Form 490. We revised paragraph (d)(2) to indicate that only two microfiche copies (one of which must be a master) must be filed for Phase I cellular applications. We revised paragraph (e) to include the 7-day filing requirement for the paper original of Phase I cellular applications selected in a random selection process (contained in old Section 22.6(d)(3)), and the 15-day allowance for filing the microfiche of opposition and reply pleadings (contained in Section 1.45).

§ 22.107 General application requirements.

We added a sentence to indicate that applications must be signed as required by Section 1.743 of the rules. Although this is not a substantive change, we believe that it deserves mention. We believe that a reference to the requirement to sign applications should be included in Part 22 because failure to comply with it could result in the dismissal of an application. We also note that we amended Section 1.743 to allow "electronic signatures."

§ 22.108 Parties to applications.

The proposed rule provides that each application for an authorization in the Public Mobile Services must disclose the real party or parties in interest to the application. Such disclosures must include (a) a list of the applicant's subsidiaries, if any; (b) a list of the applicant's affiliates, if any; and (c) a list of the names, addresses, citizenship, and principal business of

any person holding 5% or more of each class of stock, warrants, options, or debt securities of the applicant. The intent of the NPRM was to propose the retention of the substance of Section 22.13(a)(1) as it existed prior to the NPRM with respect to the disclosure of real parties in interest. The proposed rules inadvertently omitted the substance of old Section 22.13(a)(1)(iv), however, which requires that initial cellular applicants submit specific information concerning each partner in a partnership. Our intent then was to move this cellular-specific rule to new Subpart H, specifically to new Section 22.953, which contains the requirements for the exhibits to be included in initial cellular applications. We have decided instead to restore the missing language to this section with a reference to Section 22.953.

NewVector and BellSouth recommend that the proposed rule be revised to reflect a comprehensive description of the parties who must be identified in an application based on existing case law and practices, while eliminating unnecessary information. Bell Atlantic believes that the proposal to require all applicants to include detailed ownership and other information is redundant, if Part 22 applicants are required to file FCC Form 430 with their first application. Thus, it concludes that the proposed information collection is an unnecessary paperwork burden on applicants and the Commission. USTA also suggests that the proposed rule should make clear that the information required by this section may be met by referencing a licensee's current FCC Form 430.

We have adopted the substantive provisions of old Section 22.13(a)(1) concerning the disclosure of information concerning real parties in interest. Given that the NPRM did not specifically ask for suggestions concerning any other possible substantive provisions for new Section 22.108, we will not expand upon the language proposed in this rule making. We disagree that the information required by new Section 22.108 is not needed because it is the same information collected in FCC Form 430. In the Public Mobile Services, we do not require that FCC Form 430 be submitted by every applicant, but only by those seeking an assignment of authorization or transfer of control.

§ 22.115 Contents of applications.

This rule is a rewrite of old Section 22.15. In the new rule, a note following paragraph (a)(4) states that until further notice, the Commission will continue to require that geographical coordinates submitted be based on the 1927 North American Datum (NAD27). The note also advises that the Federal Aviation Administration (FAA) currently requires geographic coordinates based on the 1983 North American Datum (NAD83). Thus, applicants are alerted to the fact that they may need to convert geographical coordinates from one datum to the other in order to satisfy the requirements of both agencies.

McCaw, GTE, PagingNet, Metrocall, and Joint Commenters all argue that the requirement to use the new datum for FAA filings and the old one for Commission filings leads to confusion on the part of applicants and between the two agencies. McCaw and GTE recommend that during the interim before the Commission converts to NAD83, applicants be required to submit two sets of coordinates, one based on NAD83 and the other on NAD27.

We agree with McCaw and GTE that, during the transition to NAD83, we should allow applicants and notifiers to voluntarily submit NAD83 coordinates in addition to the required NAD27 coordinates. Sometimes having both sets of coordinates readily available facilitates resolving air navigation hazard questions and avoids our having to request additional information from applicants. Accordingly, in Schedules B and C of FCC Form 401 we are providing space for applicants and notifiers to supply NAD83 coordinates should they wish to do so.

§ 22.120 Application processing; initial procedures.

This rule is a clarification and update of old Section 22.27. It specifies the initial procedures that our Mobile Services Division (MSD) follows when processing applications for authority to operate a Public Mobile Services station. Joint Commenters point out that the proposed rule makes it clear that the assignment of a file number does not preclude the return or dismissal of an application. Therefore, they recommend that we delete all references to acceptance for filing of an application as being "tentative." In addition, Joint Commenters aver that the proposed language, which states that the Commission "periodically" issues Public Notices listing applications that are accepted for filing, indicates that the Commission plans to alter its current practice of releasing weekly Public Notices. It opposes any effort to alter this practice, believing that licensees could miss relevant information and this might lead to additional controversies.

We are persuaded that applicants are generally aware of the fact that, even though we list applications on our public notices as "accepted for filing," we may subsequently find that these applications are, in fact, not acceptable for filing. Accordingly, we agree to delete the references to the acceptance of applications for filing as being "tentative." Our use of the word "periodically" in new Section 22.120(d) does *not* signal an intent to alter our current practice of providing weekly Public Notices of filings and actions in the Paging and Radiotelephone Service. The old rule specifies that we will issue public notices "at regular intervals" but does not specify that they will be issued weekly. The word "periodic" means "occurring or re-occurring at regular intervals." Therefore, our use of the word "periodically" does not change the substance of this rule. We note however, that under either the old or new rule, we do have the flexibility to issue public notices either more or less frequently (*e.g.*, if necessary to accommodate changes in the volume of applications filed).

Lastly, we are adding language in paragraph (a) indicating

that for administrative efficiency, the Commission, in its discretion, occasionally (1) consolidates separate applications filed simultaneously by the same applicant into a single application (with one file number) and (2) splits applications comprising two or more severable proposals into separate applications (with different file numbers). This reflects current practice.

§ 22.121 Repetitious, inconsistent or conflicting applications.

We proposed to revise old Section 22.21 and add a new paragraph which provides that where an authorization is automatically terminated for failure to commence service, the Commission will not consider an application by the same party for authorization to operate a station on the same channel in the same geographic area until one year after the date the authorization is terminated. We explained that this proposal would discourage warehousing and encourage applicants to construct facilities for which they have received an authorization.

The commenters oppose the proposal prohibiting reapplication for the same channel in the same geographic area. For example, Centel Cellular Company (Centel), Telocator, Southwestern Bell Corp. (Southwestern Bell) and others argue that the proposal does not take into account situations where authorizations expire due to circumstances beyond the applicant's control, such as delays in receiving zoning approval and difficulties in negotiating a lease agreement, or legitimate budgetary constraints. Centel contends that the proposal unfairly works against licensees who seek to abandon one site in favor of a neighboring location that could provide better coverage. Telocator argues that this proposal exposes existing licensees to competing applications and works against wide-area systems. It suggests that we allow applicants to reapply if the facilities are within a specified distance of an operating co-channel station. McCaw and Joint Commenters suggest that a one year moratorium on refiling should not apply in cases where an authorization is voluntarily returned. SNET Paging, Inc. (SNET) believes that the proposed rule should not require a waiting period before an existing paging operator may reapply for a transmitter whose interfering contour is within the composite interfering contour of the existing transmitter.

Despite the opposition of the commenters, we are adopting this proposal with one modification. This new rule is intended to address an abusive practice whereby some licensees repeatedly obtain and hold authorizations for a channel or channels in an area, but never construct the stations. By continuing to apply for and obtain authorizations on a channel in a given area, and then allowing those authorizations to automatically terminate for failure to construct, a licensee can, at minimal cost, control that channel and prevent a competitor from obtaining an authorization for it, without using it to provide service to the public. The rule as revised will allow the Commission to dismiss such applications. The rule does not apply to situations where the licensee submits an authorization for cancellation. It applies only to situations where the authorization automatically terminates. When a license is canceled, public notice is given of that action, allowing others to become aware that they may have an opportunity to apply for the relinquished channel. In situations where construction is delayed by circumstances truly beyond the licensee's control, the rules provide that the licensee may apply for an extension of time to construct. The one modification we are making to the proposed language is to exempt authorizations in the Cellular Radiotelephone Service. Because cellular authorizations convey authority to operate on all cellular channels in a channel block in a market, and cellular licensees can not obtain authority for both channel blocks in a market, the type of abuse this rule is intended to curb does not occur in the Cellular Radiotelephone Service.

§ 22.122 Amendment of applications.

This section replaces old Section 22.23(a), (b), (d) and (f). We adopt this section as proposed.

§ 22.123 Classification of filings as major or minor.

We proposed to combine in this section the rules in Part 22 for classification of applications and amendments. Section 309 of the Act (47 U.S.C. § 309) provides that, with certain exceptions, all applications and substantial amendments thereto are subject to a 30 day public notice period before grant, but that "minor" amendments to these applications are not. Old Section 22.23(c) set forth criteria for the classification (as "major" or minor) of amendments to applications. Old Section 22.27(c)(1) referenced these criteria in the context of defining which types of applications are considered "applications for a minor change in the facilities of an authorized station" under the Act (47 U.S.C. § 309(c)(2)(A)). We proposed amendments intended to (1) eliminate the need for this cross reference by combining the separate classification rules; (2) clarify the criteria for classifying amendments; and (3) set forth criteria for classifying applications, instead of classifying them by reference to the criteria for amendments. For the most part, the proposed rule maintains the classifications that we have historically used. In view, however, of increasing congestion and interference in the Public Mobile Services channels used for fixed (*e.g.*, control or repeater) operations, and the elevation of fixed stations from secondary to primary status, we proposed that applications (or amendments) for technical modifications to fixed stations no longer automatically be considered minor. We requested comment as to whether there are circumstances under which an application (or amendment) requesting a change in the location or technical parameters of an existing fixed transmitter could properly be classified as minor.

McCaw and ALLTEL Mobile Communications, Inc. (ALLTEL) state that the proposed rule is inconsistent with rules we later adopted in the unserved cellular area proceeding (CC Docket No. 90-6), in regard to certain contract extensions. McCaw finds the proposed rule confusing in that it refers to

"new" CGSAs; McCaw believes this could be misinterpreted to mean a modified or enlarged CGSA proposed by the existing licensee. Bell Atlantic and New Par recommend that the rule be revised to clarify that a filing is major only if it seeks authority for the "initial" CGSA in the market, and that service area boundary (SAB) extensions be excluded where the adjacent market licensee consents.

Telocator makes several recommendations. It recommends that the rule be amended as necessary so that applications and amendments requesting only the following modifications to fixed stations would be classified as minor: (1) modifications to 72-76 MHz control stations, provided that there is no increase in the height, no increase in power, and no change in location; (2) modifications to 150 MHz and 454 MHz control stations, provided that the service area contour and interfering contour are not enlarged; (3) modifications to 928 MHz, 932 MHz, and 959 MHz control stations, provided that there is no change in location and no decrease in co-channel separation; and (4) modifications to convert base stations to control stations, provided that the facilities are operated under the same technical parameters authorized to the station as a base.

Joint Commenters recommend that any amendment to a pending application that cures an otherwise fatal application defect be classified as a major filing in accordance with *Continental Cellular*, 6 FCC Rcd 6384, 6385 (1991). Joint Commenters further recommend that the rule provide that an application to change a requested channel in the 931-932 MHz paging band is not a major filing. Joint Commenters also recommend that the rule be modified to reflect provisions of old Section 22.23(c)(2), which classifies filings involving service contour expansions greater than 1 mile (1.6 kilometers) along a cardinal radial as major (and conversely, those involving expansions less than 1 mile (1.6 kilometers) as minor.

Initially, we note that much of the rest of the commentary on this proposed rule is addressed to the uses of and requirements for our two primary forms (FCC Forms 401 and 489). The uses of and requirements to file these forms are actually located in other rule sections. The main purpose of new rule Section 22.123 is to explain the basis upon which we classify the applications and amendments to applications that we receive (all of which should be on FCC Form 401), pursuant to Section 309 of the Act. Subsection (g) of Section 309 specifically authorizes the Commission to adopt reasonable classifications of applications and amendments in order to effectuate the purposes of that section (which principally concern public notice and opportunity for parties to file petitions to deny). Although licensees may file an application requesting authority to make any type of change to their facilities, certain existing and proposed rules allow them to make various types of changes to their facilities without filing an application and obtaining prior approval, *provided that an application requesting the change would be classified under Section 22.123 as minor*. See, for example, old Section 22.9(d) and new Section 22.163. Thus, an important additional role for new Section 22.123 will be to provide guidance as to what types of technical changes to facilities can be made without prior Commission approval. New Section 22.123 does not in itself require applications or amendments to be filed, nor does it address the use of the specific forms, *i.e.*, FCC Form 401 or Form 489. The requirement to file applications (FCC Form 401) stems from new Section 22.3 (must have authorization to operate station) and is contained in new Section 22.105 (authorization granted only upon written application).

After consideration of the comments, we are adopting the proposed rule with a number of changes. First, in regard to the comments that the proposed rule is complex and confusing, we have restructured it to have fewer paragraph levels. We believe this clarifies the rule and makes it easier to follow. We established a separate paragraph for the Rural Radiotelephone Service because several of the criteria applicable to the Paging and Radiotelephone service do not also apply to Rural Radiotelephone filings. We reworded the paragraph concerning "new CGSAs" to clarify that applications are classified as major if they request authority to operate a new cellular system. This paragraph covers only applications for a new system that, if granted, result in assignment of a new station call sign and creation of a new station file. It should not be interpreted to apply to applications requesting expansion of an existing CGSA (particularly during the five year build-out period). We can, however, understand why the commenters made this interpretation, as we did not include a paragraph covering expansion of CGSAs after the five year build-out period. To correct this, we added a new paragraph (g)(2) providing that applications requesting expansion of an existing CGSA, except during any applicable five year build-out period, are classified as major. Thus, all Phase I and Phase II unserved area applications that propose expansion of an existing CGSA are classified as major.

In regard to McCaw, ALLTEL, Bell Atlantic and New Par's comments concerning contract SAB extensions in the Cellular Radiotelephone Service during the five year build-out period, they are correct and we modify the rule to conform to the changes we made in old Section 22.9(d)(7) in the *Second Report and Order in CC Docket No. 90-6*, 7 FCC Rcd 2449 (1992).

Under proposed and new Section 22.123(b), applications for regular authorization of facilities operating under a developmental authorization are classified as major. We believe this classification is appropriate because most developmental authorizations are issued to provide a trial period for a particular transmitter or service, in view of a particular interference potential. Applications for regular authority should be subject to petitions to deny from parties that may have received interference during the trial period. Also, we note that applications for developmental authorizations pursuant to new Section 22.409 (experimentation toward the establishment of a new public mobile service) are classified as major.

Applications for developmental authorizations pursuant to new Sections 22.411, 22.413, 22.415, or 22.417 could be classified either as major or minor, depending upon how they meet the other criteria in this section.

As proposed, we remove the provision contained in old Section 22.23(c)(2) whereby filings proposing an expansion of a service area were classified as major only if the expansion would be larger than 1 mile (1.6 kilometers) along one or more of the cardinal radials. This provision originated in 1976, when engineering exhibits with applications were typically evaluated subjectively on a case-by-case basis. It was part of a set of provisions intended to add objectivity to the process while still allowing the Commission some flexibility in classifying amendments as major or minor (see *Amendment of Parts 1 and 21 of the Commission's Rules and Regulations Applicable to the Domestic Public Radio Services (other than Maritime Mobile), Report and Order*, Docket No. 19905, 60 FCC 2d 549,555 (1976)). The service area formulas we are adopting in new Sections 22.537 and 22.567 will eliminate the ambiguities that resulted from visually reading the Carey Report curves, obviating the 1-mile allowance for error. Although applications for service area expansions of 1 mile or less would have been classified as minor under old Section 22.23(c)(2), old Section 22.9(b)(6) prevented licensees from expanding their service area except upon grant of an application. Likewise, old Section 22.117(b)(1) prevented licensees from adding a transmitter that would result in *any* expansion of a station's service area, except by grant of an application for authority to operate from the new site. Consequently, the only effect of this provision was to deny parties that might be adversely affected by an expansion of less than 1 mile notice and the opportunity to file a petition to deny the application. Our new interference criteria (see new Sections 22.537(a) and 22.567(a)(1)) are based on contour overlap, and any overlap, including overlaps of 1 mile or less will be considered as potentially causing interference. If we were to retain the 1-mile provision, a licensee could encroach upon a neighboring system in steps, by filing a series of "minor" applications, each proposing an additional expansion of less than 1 mile. We do not wish to encourage this type of creeping expansion by continuing to accord an advantage to applications for small expansions over applications for substantial expansions.

In regard to Telocator's suggestions, the rule as proposed provides that, in each of the situations they described, applications would be classified as minor. We hope that our restructuring of the rule has clarified this. Applications for authority to establish new fixed stations have always been classified as major, and we are not changing this. We are, however, adopting our proposal to classify applications for authority to modify existing fixed stations (and amendments that modify such applications) as major, when the modifications involve: (1) a change in the authorized channel; (2) an increase in the effective radiated power or antenna height above average terrain in any azimuth; (3) a change in location; or (4) for stations that are subject to Section 22.150 (currently only 2 GHz stations and Hawaiian inter-island fixed stations), any substantial change in the technical proposal from that which was coordinated with other users. These criteria will apply regardless of the frequency range (*e.g.*, 72-76, 150, 450, 929 MHz, etc.). We would have liked to incorporate more flexibility for fixed stations into the rule - to allow filings proposing small changes in the location, antenna height, or transmitting power to be classified as minor. However, our existing traditional mobile radio propagation and interference tools (such as service and interfering contours) are technically inapplicable for predicting interference or other adverse effects between fixed systems. The record does not provide any consensus as to technical criteria that we could use to determine when a filing involving a fixed station modification of the types mentioned is small enough to be considered minor within the meaning of Section 309 of the Act. We may revisit this issue in the future.

§ 22.124 Notification processing.

This rule outlines the MSD's procedures for processing notifications. In the NPRM, we noted that the number of notifications which the MSD receives has grown steadily and accounts for a significant portion of the processing workload. Although we expect that our adoption of new Sections 22.163 and 22.165 will sharply reduce the number of notifications filed, we still believe that our procedures for processing them should be codified.

§ 22.125 Applications for special temporary authorizations.

This section consolidates and clarifies Part 22 rules governing the filing and consideration of requests for special temporary authorizations (STAs). Several of the parties believe that the Commission should further expedite the handling of STA requests. For example, PacTel believes that STA requests should automatically become effective on the day filed. BellSouth recommends that licensees be allowed to make temporary minor changes in an emergency without prior approval.

Other parties believe that the Commission should provide greater flexibility in terms of the period that STAs remain in effect. PageNet suggests that the rule be revised to provide for a term of temporary authority that expires upon grant or dismissal of the FCC Form 401 application where such an application is filed concurrently with the STA request.

We disagree with the foregoing suggestions. Most of the provisions in the proposed STA rule are based on the requirements of Section 309(f) of the Act, and as such must remain unchanged. in response to BellSouth, however, we note that our adoption of new Section 22.163 will allow many temporary or permanent minor changes to be made without a requirement for prior approval (or subsequent notification), even when there is no emergency.

§ 22.127 Public notices.

This rule is a revision of old Section 22.27. Telocator and Southwestern Bell are concerned that the use of the word "periodically" suggests a change in the current practice of issuing public notices weekly. Joint Commenters recommend that the rule be revised to require public notice of *pro forma* assignment and transfer applications that are not now listed. In addition, they suggest that the sentence providing that "[i]nformative listings ... do not create any right to file oppositions or other pleadings" should be deleted because it claims that some informative listings do create such rights.

As stated in our discussion of new Section 22.120 *supra*, the use of the word "periodically" does not reflect an intent to change the practice of providing weekly public notices. Also, we will not revise the rule to require that applications for *pro forma* assignments and transfers appear on public notices. The Act does not require such notice and, in most cases, we do not believe that the public would benefit from it. In addition, we disagree that the language providing that informative listings do not create rights should be deleted. Such listings do not create rights unless the Commission specifies otherwise.

§ 22.128 Dismissal of applications.

This rule section consolidates the provisions of old Sections 22.20 and 22.28, pertaining to dismissal of applications. Joint Commenters note that paragraph (b) of the rule would enable the Commission to dismiss applications for failure to prosecute or to respond substantially within a specified time to official correspondence or requests for additional information. They argue that it is unclear what the word "substantially" is intended to mean in this context. Bell Atlantic points out that new Section 22.128(a) provides that a request by an applicant for dismissal of an application after it has been on public notice is deemed a request for dismissal "without prejudice." It believes that the status of the dismissal as being with or without prejudice should be the same, regardless of whether the request for dismissal is filed before or after public notice.

Concerning Joint Commenters' request for clarification of the word "substantially" as applied to responses to official correspondence or requests for additional information, we expect to rely upon applicants to make a good faith effort to respond to our requests. The word "substantially" means that the response must address the substance of our requests. It would not satisfy the requirement, *e.g.*, simply to acknowledge receipt of our correspondence or to respond but without providing requested materials or answers to questions posed by our requests. If an applicant refuses to provide sufficient information to enable us to make the determinations required for a grant of its application (*see* new Section 22.132(a)), then the public interest would be disserved by retaining that ungrantable application on file in a pending status. Doing so could prevent others from applying for the proposed or other nearby facilities and serving the public. Therefore, we must dismiss such applications, and this paragraph provides the basis for us to do so. A further example of the need for this type of rule is the international coordination provision in new of new Section 22.128(c)(5). In that paragraph, we proposed and are adopting herein a new provision enabling us to dismiss applications when it becomes apparent that, despite good faith efforts by applicants and administrations, the requested facilities cannot be authorized because of harmful interference anticipated by a foreign administration. When we receive an unfavorable response to an application coordination request from, for example, the Canadian Department of Communications, we generally ask the applicant to amend the technical parameters of the proposed facility to reduce predicted interference to the Canadian licensee's facility. Then we resubmit the request to the Canadian government. If a second unfavorable reply is received, we may request further amendments or in some cases ask for an on-the-air test, if provided for under the provisions of the applicable international agreement. In cases where these measures fail, however, we have not had, until now, a basis in our rules to dismiss the ungrantable application. Instead, we have relied upon applicants to voluntarily request dismissal of the application. If they refuse, the application could remain on file in a pending status indefinitely.

As a minor matter, we reorganized the proposed rule so as to avoid characterizing as "defective" applications that are dismissed because the spectrum requested is not available, (*e.g.*, a favorable international coordination response cannot be obtained), mutually exclusive applications that are dismissed because they are not the application that was granted after an auction, hearing or random-selection process, and untimely filed applications. In the first two situations, the applications should not be termed defective because they are ungrantable for reasons beyond the applicant's control. In the latter case, the application itself is not necessarily defective, but is simply prematurely or late filed. We also added new provisions under paragraph (e) providing that applications may be dismissed if there are no available channels to be assigned. These new provisions are procedural in nature and stem logically from old Section 22.4(a)(2) and proposed Section 22.7.

Finally, in regard to Bell Atlantic's comment about the status of a dismissal, an application cannot be dismissed if it has not been accepted for filing. If a request for dismissal is made before public notice of the acceptance for filing, the application is simply returned to the filer without any Commission action.

§ 22.129 Agreements to dismiss applications, amendments or petitions to deny.

We proposed to add a new rule governing agreements to amend or dismiss applications, which is similar to the rules that govern such agreements in the broadcast services. *See Formulation of Policies and Rules Relating to Broadcast Renewal Applicants*, 4 FCC Rcd 4780 (1989), *recon. denied*, 5 FCC Rcd 3902 (1990). The proposed rule would require

parties that file a mutually exclusive application for authorization to operate a Public Mobile Services facility and subsequently enter into a written agreement to withdraw that application to obtain the approval of the Commission. The rule would also limit the consideration that an applicant can receive for agreeing to withdraw an application to its legitimate and prudent expenses. We further proposed that when a petition to deny is withdrawn in exchange for money, the payment to the petitioner be limited to the legitimate and prudent expenses of prosecuting the petition. Similarly, proposed Section 22.129 provided for the reimbursement of a potential petitioner's or objector's legitimate and prudent expenses incurred in preparing to file a pleading, even if the pleading was never filed.

Applicants Against Lottery Abuses (AALA) oppose this proposed rule. AALA believes that adoption of this provision would seriously debilitate or eliminate the efforts of "private attorneys general" to assist the Commission in policing abuse of its cellular rules, assuring that many such abuses go undetected in the future. The opportunity for private parties to assist the Commission, it argues, is expressed in the Communications Act and in other federal laws. Rather than a blanket limitation on settlement payments, AALA recommends that the Commission require that all cellular settlements involving withdrawal of a petition to deny be submitted to the Commission for approval. AALA also suggests that the Commission should deny payments to petitioners who file frivolous petitions.

Joint Commenters recommend that the Commission adopt a general rule prohibiting dismissing applicants and petitioners from receiving payments in excess of reasonable and prudent out-of-pocket expenses without prior Commission approval. They suggest that the Commission should be required to approve reimbursement in excess of out-of-pocket expenses in the limited circumstances where the dismissing applicant or petitioner appears to have a sufficient prospect of success on the merits to warrant its continued prosecution of its position in the absence of a settlement payment in excess of its out-of-pocket expenses. Joint Commenters and Pacific and Nevada Bell believe that the Commission should avoid the potential for delay in approving settlements by amending the rule to provide that approval should be assumed to have been granted if action on the proposed settlement does not occur within 30 days of the date approval is sought. In addition, BellSouth suggests that the proposed rule should include the rules regarding settlements in comparative cellular renewal proceedings recently adopted in *Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service*, 7 FCC Rcd 719 (1992) (Report and Order), *modified on recon.*, 8 FCC Rcd 2834 (1993) (Memorandum Opinion and Order on Reconsideration), *Cellular Renewal Proceeding*.

The purpose of this rule is to discourage the filing of speculative applications and litigious pleadings designed solely to extract money from sincere applicants, while still providing some incentive for legitimate petitioners and applicants to withdraw from proceedings and thus expedite service to the public. In the *Third Report and Order and Memorandum Opinion and Order on Reconsideration in CC Docket No. 90-6*, 7 FCC Rcd 7183 (1992) (*Third Report*), we addressed and dismissed similar arguments by AALA opposing the settlement limitation rules with respect to cellular applications or authorizations. In that Order, we indicated that AALA's proposal not to limit payments could encourage "greenmail" (*i.e.*, pay-offs exceeding legitimate and prudent expenses) and also would be administratively burdensome. For the same reasons, we reject the proposals of AALA and the Joint Commenters. Moreover, we shall extend our limitations on payments made to petitioners and reimbursements made to would-be petitioners to include payments made for withdrawing or reimbursements for refraining from filing other types of pleadings such as informal objections, petitions for reconsideration and other adverse pleadings. *See Third Report*, 7 FCC Rcd at 7185-86. Thus, we consider informal objections and other adverse pleadings to be similar in scope to petitions to deny. Therefore, these pleadings should be subject to the same limitations on payments and reimbursements that apply to petitions to deny. Further, we shall not adopt the proposal that a settlement should be assumed to have been approved if the Commission has not acted upon it within 30 days of the date it is filed with the Commission. We cannot guarantee that the required review will always be complete within 30 days.

Finally, with respect to BellSouth's comments regarding the rules adopted in the cellular renewal proceeding, we stated in the *Third Report* that two of the rules adopted in the *Cellular Renewal Proceeding*, namely old Sections 22.944 and 22.945, were being removed as duplicative because they were superseded by old Sections 22.927 and 22.929, which we adopted in the *Third Report*. Old Sections 22.927 and 22.929 limit payments to parties filing petitions or threatening to file petitions against cellular applications but who later withdraw their petitions or threats to their legitimate and prudent expenses.

§ 22.131 Mutually exclusive applications.

This rule sets forth the basic definition of mutually exclusive applications in the Public Mobile Services and states that when an applicant files an application knowing that it will be mutually exclusive with other applications, it should not include additional requests for channels or facilities which by themselves would not be mutually exclusive. Joint Commenters suggest that the rule be expanded to detail procedures for severing applications containing several proposals, in the event that at least one, but not all, of the proposals cause the application to be mutually exclusive. Joint Commenters note that the Mobile Services Division sometimes splits applications to effect such severances, but these procedures have never been reflected in the rules.

It is true that the MSD has split applications on occasion, when necessary for administrative efficiency. In addition to

separating the proposals in an application that cause it to be mutually exclusive from those that do not, MSD has also split applications for other administrative reasons (*e.g.*, to separate one-way paging channel requests from two-way mobile channel requests so that different call signs can be assigned and to separate requests for facilities that are widely separated geographically.) Furthermore, we anticipate that it may occasionally be necessary for us to split applications in order to apply our new criteria for classifying applications as initial or modification for the purpose of determining eligibility for competitive bidding procedures (see e.g. new Section 22.541).

Thus, we agree with Joint Commenters that Part 22 should note that the Commission may in its discretion split applications comprising severable proposals into separate applications, but the appropriate place to state this is new Section 22.120 rather than this rule. See discussion of new Section 22.120, *supra*.

§ 22.135 Settlement conferences.

We proposed a rule that would direct parties or their attorneys to participate in settlement conferences regarding application proceedings. The proposed rule provides that if the Commission determines that a settlement conference should be convened, the parties or their attorneys are obligated to participate in person or by telephone conference call. Failure to participate in such a conference would be deemed a failure to prosecute, rendering that party's application or petition defective and subject to dismissal.

Most of the parties generally support the proposal. GTE and SMR Systems, Inc. (SSI), however, recommend that the proposal not be limited to "contested application proceedings." For example, GTE suggests that where there is problem involving a small number of participants, it could be handled by a settlement conference as a form of negotiated rule making. In addition, GTE recommends that we minimize the burden on the Commission's staff by encouraging participants to negotiate issue resolutions without all the formalities included in this proposed rule. Bell Atlantic suggests that conferences be called only where there are specific issues within the Commission's purview that would benefit from an oral conference. Joint Commenters recommend that the rule be expanded to include the use of Alternative Dispute Resolution procedures. New Vector suggests that the rule be revised to require that a Commission attorney participate in the conferences.

Based on the comments supporting this proposal, we believe that the adoption of this rule will expedite the resolution of many contested proceedings. Further, we agree with GTE and SSI that the rule should not be limited to application proceedings. Therefore, we are amending the rule to apply to any contested proceeding. We also agree that this rule should encourage all parties to use alternative dispute resolution procedures and should reference these procedures. *See Use of Alternate Dispute Resolution Procedures in Proceedings Before the Commission in Which the Commission Is Not a Party* (*Notice of Proposed Rule Making and Second Notice of Inquiry*), 7 FCC Rcd 2874 (1992).

We disagree with New Vector that the rule should require that a Commission attorney participate in all proceedings. Although, in most cases, a Commission attorney will in fact participate in these settlement conferences, there may be instances where other Commission staff, such as accountants or engineers, will be able to conduct such conferences. Finally, we reworded paragraph (c) to avoid characterizing as "defective" an application or petition that is dismissed because of a party's failure to appear at a settlement conference.

§ 22.137 Assignment of authorization; transfer of control.

This rule tracks old Section 22.39. Metrocall suggests that consent to assignment or transfer should become valid when granted and remain valid after 60 days from the date of public notice of the grant. It asserts that this approach will reduce the confusion and pressure associated with obtaining copies of the grant and make it more likely that parties will be able to close on a Final Order without having to seek an extension of the grant. Telocator proposes revising the rule to provide that the Commission consent remain valid for one year after grant. It believes that the one-year period, which is identical to that accorded construction permits, will reduce the confusion and pressure, particularly for large transactions, and make it more likely that parties will close on the transactions without having to seek an extension of time. Joint Commenters recommend that the word "corporate" be removed from the introductory text because the rule applies to licensees doing business in other than the corporate form. Telocator recommends that the word "revert" be stricken from new Section 22.137(b) and replaced with "remain with" because the transfer or assignment does not occur if there is no closing.

Consistent with our decision to address assignments of authorization and transfers of control as separate types of legal transactions under Part 22 rather than considering a transfer of control to be a type of assignment of authorization, as was proposed (see discussion in Section 22.99, *supra*), we added terms such as "consent to transfer of control," "transferee" and "transferor" in appropriate places throughout this section. We disagree that we should allow applicants additional time to complete the transaction. Our experience has shown that parties are usually able to complete the transaction within 60 days of Commission approval. When parties have been unable to complete the transaction within the 60 day period, they typically have sought an extension of time, which is routinely granted where good cause has been shown. We believe that the rule as proposed promotes our objective of expediting application processing and does not create additional burdens on the applicants. We are removing the word "corporate" from the introductory language, although we note that this word is contained in Section 310(d) of the Act (47 U.S.C. § 310(d)). We also are replacing the phrase "revert to" with the phrase "remain with."

§ 22.139 Trafficking.

This proposed rule replaces old Section 22.40, paragraphs (a) and (b). Joint Commenters suggest that the rule should state that, in the case of applications that are expected to be included in a random selection process, the facts that (1) a large number of applications are filed; (2) delays occur in the processing of the applications; and (3) the applicant receives a grant only in isolated territory, are all "foreseeable" and will not be deemed changed circumstances for the purposes of prematurely transferring an authorization.

The objective of this rule is to state generally the Commission's policy that carriers must not obtain or attempt to obtain authorizations in the Public Mobile Services for the principal purpose of speculation or profitable resale, but rather for the provision of common carrier service to the public. The rule provides that any application may be reviewed by the Commission to determine if the circumstances indicate trafficking in Public Mobile Services authorizations, and the Commission may require parties to submit information demonstrating that they are not speculating in authorizations. Therefore, we find that the language suggested by Joint Commenters is unnecessary.

§ 22.142 Commencement of service; notification requirement.

This rule replaces old Sections 22.9(b) and 22.43(a) and (b). The matter of what constitutes service to the public raised significant attention in the comments and is discussed in the *Report and Order*. The commenters also raised several minor issues concerning this rule which we address here.

McCaw and others argue that the proposed rule could be interpreted to require notification every time a new cellular transmitter is brought into service, which would be inconsistent with the proposal to eliminate the notification requirement for most internal transmitters added to cellular systems. They recommend that for cellular licensees, the requirement to notify the Commission apply only when commencing initial service on the system. Radiophone notes that the word "mailed" appears to limit how notifications may be filed and suggests that it be changed to allow notifications to be delivered to the FCC by any means.

We are persuaded that the proposed rule could be misinterpreted as requiring cellular licensees to notify the Commission whenever a new transmitter is brought into service. Therefore, we revise the rule to clarify that point and also explain that notifications can be mailed or delivered by other means.

§ 22.143 Construction prior to grant of application.

This rule consolidates all rules and policies regarding the construction of facilities prior to grant of an authorization to operate them. Construction of facilities prior to the grant of an authorization has been termed both informally and in some case law as "pre-grant construction" or simply "preconstruction." The proposed rule provides generally that Paging and Radiotelephone Service applicants may begin construction 90 days after the date of the Public Notice listing the application as acceptable for filing; and that Cellular Radiotelephone Service tentative selectees may begin construction 60 days after the date of the Public Notice listing them as tentative selectees. However, there are circumstances (*e.g.*, international coordination needed, petition to deny filed, environmental processing required) under which applicants may not begin construction until their application is granted.

McCaw, GTE, Bell Atlantic and others argue that the 90 day waiting period for the Paging and Radiotelephone Service is too long and would no longer be relevant if the proposal to process applications on a first come, first served basis is adopted (thus eliminating the 60 day period for the filing of competing applications). They assert that applicants should know within 30 to 45 days whether any petitions to deny or mutually exclusive applications have been filed. Therefore, they recommend that the rule be modified to permit pre-grant construction 35 days after the date an application is listed on public notice. Telocator also claims that the 90- day waiting period constitutes a disparate regulatory treatment of Part 22 licensees in contrast to Private Radio Service licensees, who may construct at any time. They suggest that the rule be modified to allow applicants to construct most facilities at their own risk after filing their applications. Finally, BellSouth recommends that paragraph (e), which provides that an applicant must not begin construction "if the Commission notifies the applicant orally or in writing," be modified to require that the Commission provide written confirmation after providing oral notice.

We adopt the proposed rule with modifications. First, we correct the introductory text to state that operation may not begin until the Commission grants the authorization. The proposed text, taken from old Section 22.43(d)(6), had stated that operation could not begin until the Commission issues an authorization. Sometimes, however, an authorization may be issued a few days after the application is granted. The Act requires only that the authorization be granted, not necessarily issued. Also, we added a sentence to clarify that, if the provisions of this section are not met, applicants must not begin to construct Public Mobile Services facilities before an authorization to operate is granted. We note that the mention of the service commencement notification requirement (see new Section 22.142(b)) was dropped because that section will now allow operation 15 days before the notification is mailed or otherwise delivered.

Second, we are not adopting the language of proposed paragraph (b), which stated that construction may begin upon filing of an application (no waiting period) in the Paging and Radiotelephone Service (only) if the service area of the station is expanded by less than 2 kilometers (1 mile). This provision

was taken from old Section 22.43(d)(4)(iii), which was intended to allow the immediate construction of facilities requested in an application that would be classified as minor under old Section 22.23(c)(2) and also met the conditions listed in old Section 22.43(d)(3) (proposed paragraph (g)). This provision is no longer valid because, under new Section 22.123, any expansion of a service area is classified as major. Also, there is no reason to limit this provision to stations in the Paging and Radiotelephone Service. If, for some reason, an application is filed in *any* of the Public Mobile Services requesting authority to operate additional or modified facilities where such operation would have been allowed without prior Commission approval under new Sections 22.163 and 22.165, this section should not be construed to prevent that construction prior to the filing of such application. To preclude such an interpretation, we revised the introductory text to clearly state that applicants may construct and operate facilities pursuant to new Sections 22.163 and 22.165 at any time, regardless of whether an application is filed requesting authority for such operation.

We agree that the existing 90 day waiting period for Paging and Radiotelephone Service applicants to begin construction is too long. Therefore, we reduce the waiting period from 90 to 35 days. We also change the waiting period for cellular applicants to 35 days. Thus, both cellular and paging applicants have the same waiting period. This period is necessary to allow us to determine whether a petition to deny an application was timely filed. If a petition to deny is filed, it brings into question whether the application can be granted. As proposed, we retain the conditions that disallow construction when we can not be reasonably certain that we will be able to grant the application (see proposed paragraph (g), which becomes new paragraph (d) after the changes outlined above). Because construction of Public Mobile Services facilities entails not only the financial risk to the applicant cited by Telocator, but also environmental and other consequences affecting the public, we believe that it would not be in the public interest to allow construction of Public Mobile Services facilities to begin until it is reasonably certain that the facilities can be authorized.

We add language to proposed paragraph (e) (which becomes new paragraph (b) after the changes outlined above) stating that oral notification to stop construction will be followed by written confirmation.

§ 22.144 Termination of authorizations.

This rule lists the five ways, other than revocation, that Public Mobile Service authorizations can be terminated. BellSouth, New Vector, PageNet and others support automatic termination of authorizations for failure to construct or operate without specific Commission action. They believe that such automatic termination reduces paperwork and frees up unused channels more rapidly. Telocator asks, however, whether a channel becomes available for reassignment immediately upon termination of an authorization or only upon issuance of a public notice listing the authorization as terminated. Joint Commenters recommend that the rule be modified to reflect the former course, so that applicants can apply for channels without waiting for FCC action. BellSouth suggests that the proposed rule should be modified to allow exceptions to the automatic termination provision on a case-by-case basis where good cause is shown and an extension of time to comply with our construction rules is timely filed. PageNet supports the proposed elimination of reinstatements.

Several other parties oppose the proposed rule. For example, Southwestern Bell argues that the automatic termination provision is inflexible and would burden carriers' attempts to provide service to the public. Furthermore, it is concerned that the rule could be interpreted as resulting in automatic termination of an entire authorization if service does not begin from all authorized transmitters within the construction period. It recommends that the proposed rule should provide that authorizations do not automatically terminate when the Commission has failed to act upon a request for extension of time to construct prior to the required date of commencement of service. Metrocall contends that the proposed automatic expiration provision, coupled with the proposed first come, first served rule and the one year refiling prohibition, works against licenses seeking to expand their systems. Finally, Radiophone and Bell Atlantic oppose the proposal to eliminate reinstatements. They claim that is unduly harsh and may disrupt service to the public. Joint Commenters recommend that the provision allowing licensees to apply for reinstatement during a 30-day period after the construction period ends be retained, because there can be unexpected legitimate circumstances preventing compliance. They argue that elimination of the reinstatement period is "draconian" in light of the proposed limitations on reapplication for expired facilities.

We continue to believe that when a licensee abandons or fails to construct and operate a Public Mobile Services facility, the authority to operate *that facility* (not other facilities under the same authorization that were in fact constructed and brought into operation) should automatically terminate without specific Commission action. We disagree with commenters who believe this rule burdens carriers expanding their systems. We also are eliminating reinstatements as proposed. Instead of seeking reinstatement after an authorization automatically terminates, carriers should request an extension of time to complete construction before the end of the construction period. As a related matter, we incorporate Southwestern Bell's suggestion to add language stating that authorizations do not automatically terminate while a timely filed request for extension of time to construct is pending.

§ 22.145 Renewal application procedures.

The proposed rule states that applications for renewal must be filed by the licensee prior to but no more than 30 days before the expiration date of the license. This would eliminate the period of time after the existing 30 day filing period during

which it is too late to file for renewal, but the authorization has not yet expired. We also proposed to eliminate the provision of the old rule that allows licensees who failed to timely file renewal applications to file reinstatement applications after the authorization expires.

NYNEX, and Pacific and Nevada Bell support our proposal to eliminate the gap between the license expiration date and the latest permissible renewal application filing date. Pacific and Nevada Bell recommend that we permit bulk renewals with a minimum amount of information (*i.e.*, call sign and station location). Along the same lines, Joint Commenters suggest that the renewal form be revised to require that applicants list only the call signs for facilities being renewed. Metrocall and Telocator believe that we should allow applicants to file their renewal applications at any time during the last year of the license term. According to the parties, this change would help avoid the rush of filings at the end of the renewal period and also permit the Commission and the Public Mobile Services industry to allocate resources more easily to the renewal process. Finally, SSI believes that failure to file a renewal application should render an authorization terminable, but should not automatically terminate the authorization. It argues that this approach would balance the need for spectrum reclamation against the need to maintain uninterrupted service to the public.

We adopt the rule as proposed. Because old Section 22.45 specifies the first day of various months as the date that authorizations expire, most current authorizations will expire together on particular days each year. In the days before computers, this was a sensible way to manage the renewal work load. Because we are adopting the proposed language for new Section 22.144(a) allowing any day of the year to be an expiration date, license expirations will eventually be spread out more evenly throughout the year. Allowing licensees to file renewal applications at any time during the 12 months prior to expiration of the authorization might help, at least in the near term, to avoid a rush of filings on particular days. However, Section 307(d) of the Act (47 U.S.C. 307(d)) provides that the Commission can not grant renewal applications for common carrier stations sooner than 30 days prior to the expiration of the license term. Consequently, we would have to retain the early filed renewal applications in a pending status until such time as they could be granted. We believe that such retention would be administratively inefficient.

§ 22.147 Authorization conditions. [PROPOSED]

This proposed rule sets forth the texts of conditions routinely placed on Public Mobile Services authorizations. The matter of conditional licensing of stations in the Paging and Radiotelephone Service raised significant attention in the comments and is discussed in the Report and Order. The Commission did not adopt the proposed rule.

§ 22.150 Standard pre-filing technical coordination procedure.

This section combines old Sections 22.100(d)(1)-(d)(11) and 22.501(m)(4), which were in turn based upon old Section 21.100(d). It applies only to 2 GHz microwave and Hawaiian Inter-Island stations. The 2 GHz microwave channels are within the newly allocated Emerging Technologies Band, consequently the approximately 450 Public Mobile Services stations currently authorized to use them may have to relocate to other fixed bands in the future. To our knowledge, there are no authorized Hawaiian inter-island stations. In 1990, we proposed to expand the applicability of this general procedure to virtually all Paging and Radiotelephone Stations. *See Amendment of Part 22 of the Commission's Rules to Require the Prior Coordination of Public Land Mobile Service Applications*, (*Notice of Proposed Rule Making*) in CC Docket No. 90-76, 5 FCC Rcd 1662 (1990). The comments filed in response to that notice by and large opposed the prior coordination proposal. However, we note that we recently adopted this type of rule for use in the Personal Communications Services under Part 24 and we may in the future propose to apply this section to other selected categories of Public Mobile Services stations, if appropriate, to coordinate channel usage.

§ 22.157 Distance computation.

No comments address this new section; we adopt it as proposed.

§ 22.159 Computation of average terrain elevation.

This section replaces old Section 22.115. Various commenters suggested that we modify paragraph (c) to allow the use of actual data in Dade and Broward counties, Florida, in lieu of the default value of 3 meters (10 feet). We agree and have made the default value optional.

§ 22.161 Application requirements for ASSB.

This section replaces old Section 22.104(a)(3). No comments address this section except in regard to the definition of "channel" proposed in new Section 22.99. We adopt it as proposed.

§ 22.163 Minor modifications to existing stations.

This section replaces old Section 22.9(d), the rule that allows licensees to make certain minor modifications to their stations without obtaining prior approval. In the NPRM, we proposed to eliminate the requirement that licensees notify us of these modifications. The *Report and Order* discusses fully the adoption of this proposed rule.

In addition, we made some editorial changes. We changed the words "Canadian border" in paragraph (b) to "international borders" so that we could include any relevant provisions from

agreements with Mexico as well. In paragraph (c), we changed "Antenna Survey Branch" to "Special Services Branch," and changed the address accordingly. These changes are due to an internal reorganization of the Commission's functions.

§ 22.165 Additional transmitters for existing systems.

This new section replaces old Section 22.117(b) and (c), which allowed licensees to add new "internal" transmitters to an existing system without obtaining prior approval. As with new Section 22.163, we proposed in the NPRM to eliminate the requirement that licensees notify us of these new transmitters. The comments and conclusions with respect to this rule section are discussed fully in the *Report and Order*.

We provide the following explanation of additional minor changes we made to the proposed rule. In paragraph (a), we replaced the words "Canadian border" with "international borders," for the same reason given with regard to new Section 22.163. We also add language to paragraph (a) to indicate that transmitters can be added in areas near international borders pursuant to this section, if allowable under the applicable international agreement. In paragraph (b), we change "Antenna Survey Branch" to "Special Services Branch," and changed the address accordingly. These changes are due to an internal reorganization of the Commission's functions. In the first sentence of paragraph (e), we add the phrase "except that the service area boundaries may extend beyond the market boundary into area that is part of the CGSA or is already encompassed by the service area boundaries of previously authorized facilities." This reflects our current practice. In paragraph (f), we correct the phrase "pursuant to this section" to read "pursuant to § 22.859 of this part".

§ 22.167 Applications for assigned but unused channels. [PROPOSED]

This proposed section concerned "finders' applications". As discussed in the *Report and Order*, we do not adopt this proposed rule section.

§ 22.169 International coordination of channel assignments.

This new section codifies the general requirements for coordination of channel assignments with the administrations of other countries and with the International Frequency Registration Board (IFRB).

Subpart C - Operational and Technical Requirements

OPERATIONAL REQUIREMENTS

§ 22.301 Station inspection.

This rule replaces old Section 22.200. We adopt it as proposed.

§ 22.303 Retention of station authorizations; transmitter identification.

This revision of old Section 22.201 provides that the current authorization of each station must be retained as a permanent part of the station records and that a clearly legible photocopy of the authorization must be available at each regularly attended control point of the station. In addition, we proposed to require that the station call sign be clearly and legibly marked on every transmitter, other than mobile transmitters, of the station.

Joint Commenters recommend that we delete the word "posting" from the proposed headnote because license documents need not be posted. They also suggest that we require licensees to retain (1) complete information on any modifications effectuated without notice to or prior consent of the Commission; and (2) requests to the Commission seeking corrections of outstanding authorizations. In addition, Joint Commenters recommend that licensees be permitted to retain authorization information at a central location, if such location is easily discernable from information available at each control point of the station. They also suggest that licensees be required to mark every transmitter with information identifying the licensee, contact information, frequency, and the effective radiated power (ERP) of the facility. GTE believes that requiring that transmitters be marked does not take into account the fact that transmitters are often switched out of a particular system and used in other locations. They recommend that licensees be allowed to identify transmitters by means other than transmitter markings.

It is true that we no longer require licensees to post copies of station authorizations. Therefore, we are revising the headnote to substitute "Retention" for "Posting." We agree that licensees should be required to retain complete information with respect to their facilities as a part of their station records and we are adding language to clarify this. We agree with Joint Commenters that carriers should be allowed to retain authorization information at one location. Therefore, we are adding a sentence to indicate that, in lieu of a photocopy of the current authorization, licensees may instead make available at each control point the address or location where the licensee's current authorization may be found.

The purpose of requiring the marking of transmitters is to facilitate on-site identification of the licensee should this become necessary. Often, the transmitter of a Public Mobile Services licensee may be housed in the same closet with similar-looking equipment belonging to other public, private and/or government land mobile licensees. In such situations, marking the call sign on the transmitter makes it possible to readily identify the licensee. It would be a violation of this rule if our field representatives were to visit such a site and be unable to readily determine the call sign (and thus the identity of the licensee) of a Public Mobile Services transmitter. As with many of our rules, a common sense interpretation must be applied. In

situations where the identity of the Public Mobile Services licensee is obvious, the rule would not be enforced. For example, in the Cellular Radiotelephone Service, where the name of the cellular carrier is clearly marked on or in the transmitter building at a cell site and the building does not contain transmitters of other licensees, we certainly would not expect the licensee to mark the cellular system's call sign on each of 30 cellular channel transmitters installed together in a rack inside the building.

In any event, it is not necessary that Public Mobile Services transmitters be marked with more than the station call sign. The call sign enables us to readily identify the licensee, and unlike the suggested additional information, it is rarely changed, minimizing the burden on the licensee of keeping the marking current.

§ 22.305 Operator and maintenance requirements.

This rule is a simplification of old Section 22.205. The details of provisions to be included in maintenance contracts were removed. The essential principle remains -- that station licensees themselves (and not, for example, individuals who operate or maintain the station) are held responsible by the Commission for the proper operation and maintenance of Public Mobile Services stations.

§ 22.307 Operation during emergency.

The new rule, based on old Section 22.210, states that licensees in the Public Mobile Services may, during an emergency in which normal communications facilities are disrupted as a result of hurricane, flood, earthquake, or disaster, use their stations to temporarily provide emergency communications in a manner not currently authorized provided that such service complies with the stated technical limitations. Southwestern Bell claims that this rule as proposed is too narrowly drawn in that it does not take into account man-made disasters. It recommends that the rule also include civil unrest, widespread vandalism, national emergencies, and emergencies declared by Executive Order. We agree and modify the rule to this effect.

§ 22.313 Station identification.

This rule is based on old Section 22.213. Telocator recommends licensees be allowed to postpone station identification if there is public communication waiting to be sent. Telocator also contends that licensees should be able to defer the station identification until after the busy hour(s) because of the high value of capacity during that time.

In establishing station identification procedures, we must balance the inconvenience for licensees of transmitting their station call sign against the inconvenience for our monitoring personnel and others concerned with determining the source of transmissions or having to wait an extended period for the call sign to be sent. Although there may be some merit in the suggestions made by Telocator, there is not sufficient discussion in the record on alternative station identification procedures for us to base a decision to amend the rule along those lines in this order. We solicited comments on station identification procedures in the Further Notice of Proposed Rule Making in GN Docket No. 93-252 and we may make additional changes to this rule based on that record.

For various reasons, some Paging and Radiotelephone Service licensees' wide-area paging systems now have several different call signs assigned to various individual transmitters and groups of transmitters within the system (see discussion of new Section 22.507). Because transmitting multiple call signs to identify a system would waste air time (one call sign is sufficient to identify the licensee), we have routinely waived the old station identification rule to allow licensees to transmit just one of its assigned call signs (see the discussion of proposal in our NPRM at 7 FCC Rcd 3658,3668). We are adopting our proposal to allow Paging and Radiotelephone Service licensees to transmit just one, rather than all, of the assigned call signs in a system (see new Section 22.313(c)(3)). This will eliminate the need to routinely grant waivers of this rule.

We added a new paragraph (a)(4) exempting rural subscriber stations using BETRS in the Rural Radiotelephone Service from the general station identification rule, as suggested by International Mobile Machines (IMM). These fixed subscriber stations use digital emissions and thus the subscriber has no means to comply with the rule.

§ 22.315 Duty to respond to official communications.

This rule is based on old Section 22.302. We adopt it as proposed.

§ 22.317 Discontinuance of station operation.

This rule is a rewording and clarification of old Section 22.303. We adopt it as proposed.

§ 22.321 Equal employment opportunities.

This rule is based on old Section 22.307. We changed the deadline in the Note following paragraph (b) from May 31, 1993 to May 31, 1995. Otherwise, we adopt the rule as proposed.

§ 22.323 Incidental communications services.

This section is a rewording of old Section 22.308. We adopt it as proposed.

§ 22.325 Control points.

This section replaces and simplifies old Sections 22.515 and 22.909, using language taken from the latter section. We

modified the proposed rule by adding a sentence clarifying that the person who is on duty and responsible for station operation does not necessarily have to physically remain at the control point at all times or monitor all transmissions of the station continuously. We remind Public Mobile Services station licensees, however, that they are nevertheless responsible for proper operation of their stations at all times (see old Section 22.205 and new Section 22.305), including those times when the person responsible for proper station operation is not at the control point or is not monitoring transmissions.

TECHNICAL REQUIREMENTS

§ 22.351 Channel assignment policy.

This section, based on old Section 22.100(a), sets forth the general principles that Public Mobile Services channels are assigned exclusively in a manner intended to facilitate rendition of service on an interference-free basis in each service area, and that licensees must cooperate in the selection and use of channels in order obtain the most efficient use of the spectrum. We adopt this section as proposed.

§ 22.352 Protection from interference.

This section, based on old Section 22.100(b), states that public mobile service stations are authorized to operate on a non-interfering basis. This refers to our technical channel assignment criteria (*see, e.g.*, new Section 22.537), which are intended to prevent co-channel interference. It also lists other types of interference against which protection is not afforded by Part 22 of our rules.

Radiophone reminds us that 316 of the Act prohibits the Commission from modifying the terms of an authorization without affording an opportunity for hearing. We agree and clarify this point by changing the second sentence in the introductory paragraph to the effect that the Commission may require modifications after the licensee has received "notice and opportunity for hearing."

PageNet recommends that we add another category that affords interference protection to fixed station and base station receivers from control and repeater stations operating on adjacent channels. In *Flexible Allocation of Frequencies in the Domestic Public Mobile Service for Paging and Other Services* (*Flexible Allocation*), 4 FCC Rcd 1576 (1989), we decided to allow co-primary fixed (control and repeater) use of the channels designated for use by base and mobile stations. Pagenet is correct that we should mention the interference potential this "flexibility" gives rise to. Accordingly, we revise paragraph (c)(1) to include interference to base receivers from fixed stations. Paragraph (c)(4) already encompasses interference to fixed receivers from any source.

We add a new paragraph (c)(6) stating that, unless notification is filed, facilities modified or installed pursuant to new Sections 22.163 and 22.165 are not protected from interference. We proposed this in connection with the revision of Sections 22.163 and 22.165 in the NPRM at 7 FCC Rcd 3667 (1992). In general, such stations would not be expected to experience interference because of the presence of surrounding protected facilities of the same licensee or because of other factors. It would be unreasonable, however, to hold applicants or licensees responsible for assessing the potential for interference to facilities for which there is no public record. Likewise, it would be unreasonable to hold applicants and licensees responsible for interference studies leading to incorrect conclusions because the technical parameters contained in our station files, upon which these studies are based, are not current.

§ 22.353 Blanketing interference.

This section is based on old Section 22.100(e). We adopt this section as proposed.

§ 22.355 Frequency tolerance.

This section is based on old Section 22.101. In the proposed rule, we deleted the paragraph requiring licensees to employ a "suitable method" for measuring transmitter frequency. As long as public mobile stations are operated in compliance with the tolerances indicated, it does not matter whether the licensee or someone else measures the frequency. Today, transmitter frequency is measured with digital frequency counters. Most of these counters have a time base accuracy of ±1 part-per-million (ppm) or better, which is generally adequate to ensure compliance with this rule section. Also as proposed, we specify the tolerances in ppm.

§ 22.357 Emission types.

This section is based on old Section 22.104, paragraphs (a)(1), (a)(2), (a)(4) and (b). We add a new paragraph authorizing by rule the use of emission type 20K0D7W for BETRS stations.

§ 22.359 Emission masks.

This section is based on old Section 22.106, and contains the technical specifications for emission masks common to two or more of the Public Mobile Services. We adopt it as proposed.

§ 22.361 Standby facilities.

This section restates old Section 22.107. Joint Commenters recommend that we add the phrase "without further authority from the Commission". We find this unnecessary because the rule already states that standby facilities may be installed "without obtaining separate authorization."

§ 22.363 Directional antennas.

This section replaces old Section 22.108 and provides standards for directional antennas. We adopt it as proposed.

§ 22.365 Antenna structures; air navigation safety.

This section restates old Section 22.109. GTE recommends elimination of the marking, lighting, and maintenance requirement for licensees whose antennas are located on structures that they do not own or control. Bell Atlantic, Claircom, Radiophone, and United States Telephone Association (USTA) make like recommendations that licensees who use a shared tower, enter into tower and antenna maintenance contracts, or are otherwise not the owners or operators of the tower not be held responsible for the lighting, marking, and maintenance. Bell Atlantic, Claircom, and USTA recommend that this rule be modeled after Section 73.1213 of the rules governing broadcast stations, which allows licensees sharing a tower to designate one licensee to be responsible for tower lighting, marking, and maintenance. NewVector recommends that we add an exception to this section for "in-building radiation systems" which are completely shielded and do not present a danger to air navigation.

We hold each Public Mobile Services licensee individually responsible for complying with tower marking, lighting, and maintenance requirements. Even under Section 73.1213 of our rules, if a designated licensee defaults on the responsibility for marking and lighting a tower, we hold each licensee individually responsible for compliance. Nothing in new Section 22.365 prevents licensees from entering into agreements of the type described in Section 73.1213, whereby one designated licensee assumes the duties of maintaining a shared antenna structure in compliance with Part 17 of our rules. We decline to add an exception for in-building radiation systems; these are already exempted from FAA notification under Section 17.14 of our rules.

§ 22.367 Wave polarization.

This section is based on old Section 22.110. Although no substantive changes were proposed, the proposed rule nevertheless received some attention in the comments. PageNet suggests that we allow either vertical or horizontal polarization to be used for fixed stations transmitting on channels above 900 MHz. McCaw and NewVector ask that we allow either horizontal or vertical polarization in the cellular service. IMM suggests that horizontal polarization be specified for BETRS stations at 450 MHz to reduce the likelihood of interference between BETRS stations and stations using the same channels in the Paging and Radiotelephone Service.

First, we are changing the headnote to reflect the fact that it is the polarization of the emitted radio wave, rather than the antenna, that is relevant. This rule specifying wave polarization is important for several reasons. First, operating with crossed polarizations significantly reduces the probability of interference between facilities using the same or adjacent spectrum for different purposes. This is why vertical polarization is specified for stations in the Offshore Radiotelephone Service and for fixed stations in the 72-76 MHz band (to protect horizontally polarized TV reception), and horizontal polarization is specified for most stations in the Rural Radiotelephone Service, including all BETRS stations (for protection from vertically polarized paging base stations). A second reason is the accommodation of common antenna designs. The vast majority of mobile stations operating in the VHF and UHF spectrum employ cost effective whip antennas that radiate a vertically polarized wave. Specifying vertical polarization for services with mobile transmitters also promotes interoperability. For these reasons, vertical polarization is specified for stations in the Paging and RadioTelephone Service, the Cellular Radiotelephone Service, and for general aviation stations in the Air-ground Radiotelephone Service. Finally, we clarify the wording of paragraph (a) and change the word "stations" in paragraph (a)(1) to read "transmitters."

§ 22.369 Quiet Zones.

This section is based on old Section 22.113. GTE notes that there are paragraph numbering errors which should be corrected. We do so. Otherwise, we adopt the rule as proposed.

§ 22.371 Disturbance of AM broadcast station antenna patterns.

In the NPRM, we proposed this new rule to codify our current policy that Public Mobile Services licensees who construct or modify towers in the immediate vicinity of AM broadcast stations are responsible for installing and maintaining any detuning apparatus necessary to correct any disturbance caused by their towers to the AM station radiation pattern.

Telocator, New Par, and R.L. Biby Communications Engineering Services are concerned that the proposed rule might be used to hold Part 22 licensees responsible for AM facilities' problems they have not caused. Telocator recommends that we clarify that Part 22 licensees are responsible only for correcting the distortion caused by their construction and do not bear the burden of remedying problems caused by other sources that may distort AM broadcast patterns. New Par comments that direct attribution can be determined by comparing before and after measurements. R. L. Biby suggests that the rule allow alternatives to before and after measurements to be used, such as mathematical analysis and signal strength measurements.

In Public Notice, Mimeo No. 582 (released November 14, 1989), we stated that "[w]hether by imposition of specific conditions or by operation of law, a licensee building a new facility is obligated to take all the necessary steps to correct interference problems caused by new or modified construction." This position is supported by existing case law. *See, e.g.,*

Subrink Broadcasting of Georgia, 65 FCC 2d 691 (1977); *Athens Broadcasting Co.*, 68 FCC 2d 920 (1978); *B&W Truck Service*, 15 FCC 2d 769 (1986). Although Public Mobile Services licensees are responsible for correcting the harm they cause, they are not responsible for fixing all problems with the AM station that may have existed before the Public Mobile Services licensee constructed the tower. Public Mobile Services licensees are, nevertheless, expected to reasonably cooperate with broadcast licensees in restoring AM patterns to the licensed parameters.

The comments persuade us to modify the rule in one respect. Although we believe before and after measurements are a feasible way to determine whether a pattern distortion results from a particular tower construction, the proposed rule is too specific concerning measurement techniques. Accordingly, we are rewording the rule to refer to the measurements in more general terms. Requirements for measurement techniques for AM stations are provided in Part 73 of our rules.

§ 22.373 Access to transmitters.

This rule is a restatement of old Section 22.117(a). Southwestern Bell is concerned that, for small transmitters installed in walls or ceilings of a customer's premises, it may be impossible to comply with paragraph (a). As a practical matter, these small transmitters can not be installed in such a way that would ensure that unauthorized persons could not gain access to them. Southwestern advises, however, that compliance with paragraph (b) should be sufficient, in these cases, to prevent interference. We agree, and add an exception to paragraph (a).

§ 22.375 Use of transmitters in other services prohibited. [PROPOSED]

This rule would have replaced old Section 22.119, which prohibited the licensing or use of transmitters licensed in the Public Mobile Services for any "non-common carrier communication purposes." The proposed rule would have prohibited the use of transmitters licensed in the Public Mobile Services in any radio service other than a Public Mobile Service.

The Budget Reconciliation Act of 1993, contains provisions affecting the regulatory status of land mobile stations generally (i.e. whether these stations are to be regulated as common carriers or as a private radio service or some combination of both). The Commission, in compliance with this legislation, has issued a *Second Report and Order in GN Docket No. 93-252*, 9 FCC Rcd 1411 (1994), addressing, among other things, the regulatory status of all land mobile stations. This order determined that certain types of stations that were licensed under Part 90 as private mobile radio stations will be reclassified as commercial mobile radio stations. Moreover, there may also be transmitters licensed on channels currently available under Part 90 that provide both private and commercial mobile radio service. These developments, in effect, render the old prohibition on the licensing and use of transmitters obsolete.

We recently issued an NPRM in CC Docket No. 94-46 (FCC 94-113), proposing to remove old Section 22.119 from our rules and allow concurrent licensing of transmitters in the common carrier and private services. That docket has been folded into this proceeding and is discussed in the *Report and Order*. Since we are removing old Section 22.119 from our Rules, proposed Section 22.375 was not adopted. This means that transmitters (equipment) licensed under Part 22 may also be concurrently licensed and used under other parts of the rules, *e.g.* Part 90 on channels available under those parts. However, it does not mean that channels available under Part 22 may be used to provide a non-common carrier service.

§ 22.377 Type-acceptance of transmitters.

This rule replaces old Section 22.120. We add language to paragraph (d) to emphasize that, in regard to type-acceptance of cellular mobile equipment, the technical standards of Part 22 include new Section 22.919 concerning the security of Electronic Serial Numbers.

§ 22.379 Replacement of equipment.

This rule replaces old Section 22.121. In the proposed rule, we removed the requirement that licensees notify the Commission, in the next application for renewal or modification of authorization, that the equipment was replaced. We have no need for this information. USTA agrees that licensees should be allowed to replace equipment without authorization, but believes that immediate notification should be required, except in the case of decreases in ERP and antenna height above average terrain (HAAT), in which case notification should be required within 60 days after the change is completed. This suggestion is inapposite, because this section applies only to equipment replacement where ERP and HAAT are not changed.

§ 22.381 Auxiliary test transmitters.

This rule replaces old Section 22.524. We adopt it as proposed.

§ 22.383 In-building radiation systems.

In paragraph (g) of proposed Section 22.537, we referred to the fact that licensees could install and operate in-building radiation systems without receiving approval from the Commission. We now note that, in the Paging and Radiotelephone Service, these systems could be used on the channels designated for one or two-way mobile operation as well as those designated for one-way paging. Moreover, these systems could be used in other Public Mobile Services, such as the Cellular Radiotelephone Service. Additionally, this topic attracted more interest from commenters than we had

anticipated. Therefore, we are establishing a new separate section, in Subpart C, to address in-building radiation systems.

PageNet recommends that in order to qualify as in-building radiation systems, transmitters should be limited to an ERP not in excess of 50 watts, with antenna tip installed at or below ground level. PageNet also proposes that the rule should address leaky coaxial cable installation specifically, limiting the maximum ERP to 1 watt and the service area to no more than one mile.

We agree with the commenters that additional technical specifications for in-building radiation systems may be necessary, particularly in light of our recent adoption of more stringent radio frequency exposure limits. We believe, however, that further comment is necessary, and we will address this subject in a further notice.

Subpart D - Developmental Authorizations

§ 22.401 Description and purposes of developmental authorizations.

This section replaces old Sections 22.400 and 22.401. As proposed, we are adding a new paragraph providing that developmental authorizations may be granted for stations to provide a trial period during which it can be determined on an individual transmitter basis whether excessive interference will result. The vast majority of developmental authorizations now issued under Part 22 are for this purpose.

§ 22.403 General limitations.

This section restates old Section 22.404, paragraphs (a), (b), (c) and (e). We adopt it as proposed. We are moving the prohibition on rendition of communications service for hire to new Section 22.409. The purpose of this prohibition is to prevent the establishment of a substantial base of subscribers who become dependant on a new type of public mobile service that we might subsequently decide not to authorize on a regular basis. The vast majority of developmental authorizations now issued under Part 22 are for trial period operation of individual transmitters within a system, and for these the prohibition on providing service for hire is waived. For example, see old Section 22.501(a)(5)(ii). In its new location in Part 22, this prohibition will apply only to developmental authorizations issued for experimentation leading to the potential development of a new public mobile service.

§ 22.409 Developmental authorization for a new public mobile service or technology.

This section replaces old Sections 22.402, 22.403, 22.404(d), 22.405, 22.406, and 22.407. We adopt it as proposed.

§ 22.411 Developmental authorization of 43 MHz paging transmitters.

This new section incorporates most of the provisions of old Section 22.501(a)(5), which concern interference caused by these paging stations to broadcast TV receivers. The provisions of old Section 22.501(a)(5)(i) are not included because they became obsolete when low band two-way service was discontinued on June 30, 1988. This rule also incorporates conditions in the standard letter we have used when authorizing 43 MHz transmitters. As in the proposed rule, the type of form that licensees must file in order to obtain a regular authorization at the end of the two year developmental period is changed from FCC Form 489 to FCC Form 401. We did this for two reasons. First, in this order we are revising our rules and forms to provide that all applications filed on a form (regardless of whether they are classified as major or minor) must be on FCC Form 401, and all notifications filed on a form must be on FCC Form 489. Under the old rules, we required FCC Form 489 to be used for certain application purposes, including the instant case. Second, under new Section 22.123(b), applications for regular authorization of facilities operating under a developmental authorization are classified as major. This classification is particularly appropriate in view of new Section 22.165, under which licensees may add 43 MHz paging transmitters to an existing system without obtaining prior approval from or even notifying the Commission. Although such transmitters are subject to the provisions of this section (see new Section 22.165(d)(2)), affected parties (such as TV stations or viewers) have no opportunity to formally protest the establishment of such transmitters until the licensee applies for regular authority at the end of the developmental period. We examine all filings on FCC Form 401 as soon as they are received to determine whether they are major and thus must be listed in a public notice. We wish to avoid having to do the same thing with filings on FCC Form 489. Consequently, any filings that are major should be on FCC Form 401. Licensees affected by the change from FCC Form 489 to FCC Form 401 are advised that the application filing fee may be different.

§ 22.413 Developmental authorization of 72-76 MHz fixed transmitters.

This section incorporates the provisions of old Section 22.501(f)(1)(ii) and of the standard letter we have used when authorizing 72-76 MHz transmitters. The old rule provided that the Commission could issue a regular authorization rather than a developmental one for 72-76 MHz fixed stations "collocated" with TV Channel 4 or 5 transmitters. To check this, the Mobile Service Division staff would look for matching geographical coordinates, or other evidence that the fixed station antenna is side mounted on the TV tower. As a practical matter, it only matters that the fixed antenna is close to the TV antenna. Consequently, we proposed and are adopting a maximum of 50 meters for the exemption from developmental authorization (*see* new Section 22.413(b)(3)).

§ 22.415 Developmental authorization of 928-960 MHz fixed transmitters.

This section incorporates the provisions of old Section 22.501(g)(3)(ii) and provides additional procedures consistent with the other sections in this subpart.

§ 22.417 Developmental authorization of meteor burst systems.

This section incorporates the provisions of old Section 22.601(g)(8) and provides additional procedures consistent with the other sections in this subpart. As with new Section 22.411 above, we changed the required form from FCC Form 489 to FCC Form 401, for the same reasons.

Subpart E - Paging and Radiotelephone Service

§ 22.501 Scope.

This section states how the rules in this subpart are applied. We adopt it as proposed.

§ 22.507 Number of transmitters per station.

We adopt this rule with certain modifications. We proposed this new rule to serve two purposes. First, we proposed to eliminate the use of multi-channel transmitters in the Paging and Radiotelephone Service. This proposal received extensive comment and is discussed in the *Report and Order*.

Second, we proposed to codify our policies concerning the number of transmitters authorized together as a station. In particular, we proposed that transmitters authorized together as a station (thus sharing the same call sign) must be operationally related (*i.e.*, work together as part of a system). Transmitters that operate independently and are widely separated geographically would be authorized as separate stations (having different call signs). The proposed rule also provides that the Commission may (1) if necessary for administrative reasons, break up large wide-area systems into two or more authorizations; and (2) upon request of an applicant consolidate separately authorized stations, if appropriate under the guidelines in this section.

Our long standing policy has been to authorize all base transmitters of each licensee in a given geographical area according to the following convention: we authorize each licensee's transmitters on the one-way paging channels (see new Section 22.531) together as a station and each licensee's transmitters on the one- and two-way mobile channels (*see* new Section 22.561) together as station. The proposals for this rule section were intended to address two types of administrative problems that have arisen in recent years: combining authorizations and authorizing very large wide-area systems.

Licensees applying for system expansion facilities over the years have often marked their applications to indicate a request for a "new station" instead of an "additional facility for an existing station." Doing this usually results in the added facility being authorized as a new station and assigned a new call sign, rather than being included in the existing authorization with the existing call sign. Also, systems have been expanded by merging them with nearby, separately-authorized systems, sometimes through assignments of authorizations. As a result of this type of licensing activity, some licensees' wide-area systems now have several different call signs assigned to various individual transmitters and groups of transmitters within the system. Because transmitting all of these call signs to identify the system would waste air time, we have routinely waived the station identification rule to allow licensees to transmit just one of its assigned call signs. In this *Report and Order*, we amend the station identification rule to eliminate the need to routinely waive it (*see* discussion of new Section 22.313(c)(3), *supra*).

Despite our willingness to waive the station identification rule, licensees have occasionally requested that we combine their separate authorizations into one. We have attempted, when resources have been available, to honor these requests. There are, however, two limitations inherent in the computer data base management system (DBMS) we have used since the early 1980's that cause merging two authorizations to be very costly in terms of resources, subject to errors, and, in some cases, impossible.

First, the computer DBMS limits each station authorization to no more than 99 locations. Consequently, it is impossible to combine authorizations where the resulting combined authorization would have more than 99 locations. Second, there is no software function to easily transfer records from one authorization to another. This means that to merge authorizations or process a partial assignment of authorization, our staff must delete all the affected records from one authorization, then retype all the data back into the computer under the other authorization. Because of the significant amount of resources required to do this, when application processing fees were reinstituted, a category was added to the fee schedule entitled "combining call signs" (*see* old Section 1.1105). The old fee schedule also indicates that FCC Form 489 should be filed for a request to "combine call signs." There are no instructions or check boxes on the FCC Form 489, however, that are relevant to requests to "combine call signs." Furthermore, there have never been any Part 22 rules addressing or providing for this type of administrative action. As a result, when a licensee has filed a FCC Form 489 (as indicated in the fee schedule) requesting a merger of authorizations that either is impossible or has come during a time when resources to process it have not been available, questions have arisen as to what basis the Commission has to defer or deny the request.

The computer systems and software that the Mobile Services Division uses are currently being updated and replaced by more modern systems. We intend to redesign the paging data base to remove the 99 transmitters per station limitation. While this number of transmitters was considered adequate when the

previous computer DBMS software was designed, the current trend in paging systems is toward nationwide and regional wide-area systems, and the largest of these have more than 99 transmitters. Therefore, we adopt our proposal that there be no limit to the number of transmitters that a station may comprise. As with magnetic filings, however, we will not be able to implement this provision until the new computer software is in place. Accordingly, we are adding a Note following paragraph (b) indicating that until further notice, a station may comprise up to 99 transmitters.

As proposed, we adopt language in paragraph (b) indicating that the Commission may consolidate separately-authorized stations upon request of the licensee, if appropriate under this section. Consistent with our decision to use FCC Form 401 for all requests requiring a Commission action, we are specifying the use of FCC Form 401 for combining authorizations (and making appropriate changes to that form and to the fee schedule). Finally, we are adding language to clarify the meaning of the phrase "operationally related transmitters."

§ 22.509 Procedure for mutually exclusive applications. [PROPOSED]

In the *Notice*, we proposed to adopt a Section 22.509 to govern processing of mutually exclusive applications in the Paging and Radiotelephone Service. Subsequently, in the *Transition Notice*, we proposed to adopt rules providing for the use of competitive bidding procedures for initial applications for all commercial mobile services. Because the proposals and issues raised in the latter proceeding have superseded our original proposal, we are not adopting the proposed Section 22.509. However, see related new Sections 22.541 and 22.717.

§ 22.511 Construction period for the Paging and Radiotelephone Service.

This section replaces the first sentence in old Section 22.43(a)(2). Joint Commenters recommend we revise the proposed rule to provide that, when the release of a Public Notice listing the grant of an application post-dates the grant date by 30 days or more, the licensee has one year from the Public Notice date to complete construction. We reject this suggestion. Public Notice normally follows the grant date by two or three weeks, at most. The one-year construction period is ample time for licensees to complete construction of facilities, even considering this two to three week delay.

§ 22.513 Channel availability. [PROPOSED]

This proposed section was made obsolete by conflicting proposals in the *Further Notice*. It therefore was not adopted.

§ 22.515 Permissible communications paths.

This section replaces old Section 22.509 paragraphs (a), (b)(1) and (b)(3). Service to mobile stations aboard surface vessels is no longer considered to be incidental service.

§ 22.529 Application requirements for the Paging and Radiotelephone Service.

This section replaces portions of old Section 22.15. We adopt it as proposed.

ONE-WAY PAGING OPERATION

§ 22.531 Channels for one-way operation.

This section replaces several paragraphs in old Section 22.501. Joint Commenters recommend using the term "lowband" to refer to the low VHF (35 MHz and 43 MHz) channels, and the term "guardband" to refer to the four high VHF (152 MHz and 158 MHz) channels.

The vernacular terms "lowband" and "guardband" are not as precise as the official terms we use, but are commonly used by technicians and others in the land mobile industry. We added language indicating that the low VHF channels are sometimes referred to as "lowband" channels, and the high VHF channels are sometimes referred to as "guardband" channels. We also added a new paragraph (e), which incorporates the U.S.-Canada agreement regarding the assignment of 931 MHz channels near the border.

§ 22.535 Effective radiated power limits.

This rule applies the provisions of old Sections 22.505 and 22.506 to stations operating on the one-way paging channels. The proposed rule combined the various inter-related power limit provisions into one section. We proposed one substantive change. Currently, the antenna height power limit applicable to any given transmitter is a function of the average height above average terrain of the site. We proposed instead that the antenna height power limit for each transmitter be a function of the predicted coverage of that transmitter. This proposed method of equalizing coverage and limiting interference potential is better because it takes into account not only the surrounding terrain but also the orientation and directivity, if any, of the antenna (and tower) relative to the terrain.

In regard to the method for height-power limits set forth in paragraph (c) of the proposed rule, SSI contends that although it can be readily determined whether a given power level complies, the method is "unworkable" for determining the maximum power that could be authorized for a given antenna at a given location. We disagree. In fact we have developed a simple personal computer program that uses an iterative process to determine the maximum power that could be authorized for a given location and antenna height above average terrain under the proposed rule. We will make this program available to the public through our normal distribution methods.

PageNet opposes the continued application of basic and height-power limits to 931 MHz paging stations. It recommends that all 931 MHz paging transmitters be allowed to operate with 3500 Watts at any antenna height, provided that the applicant demonstrates that no-channel interference will result from such operations. We proposed to do this in CC Docket No. 93-116, *Amendment of Part 22 of the Commission's Rules Pertaining to Power Limits for Paging Stations Operating in the 931 MHz Band in the Public Land Mobile Service* (*Notice of Proposed Rule Making*), 8 FCC Rcd 2796 (1993). The majority of commenters in that proceeding favored this approach. Accordingly, we are adopting this proposal and we are changing paragraphs (b) and (c) to make them applicable only to the VHF paging channels.

AK Peters proposes that language be included in the rule indicating whether radials that are excluded from average terrain calculations are to be included in the calculation of the arithmetic mean value. The mean should be calculated, says AK Peters, using only cardinal radials where the service contour distance occurs entirely over land. We do not adopt this suggestion. Radio waves generally propagate with less loss over water. Excluding over-water cardinal radial distances from the average would result in higher powers. Therefore, the potential for interference to stations beyond the water area would be further increased. We will, however, allow exclusion of radials that are mostly (*i.e.*, 90% or more) over water, to avoid unnecessarily reducing transmitting power for transmitters located along coastlines.

§ 22.537 Technical channel assignment criteria.

This new rule replaces old Sections 22.15(b)(2)(i) and 22.504, which specified procedures for determining interference between co-channel stations. Also, in regard to 931 MHz paging stations, the proposed rule contains two tables that combine and replace the tables in old Sections 22.502(c), 22.503(d) and 22.504(b)(2). As proposed, the rule would replace the existing Carey Report procedures with mathematical formulas for determining service areas and interfering contours of stations. We proposed to replace the Carey Report procedures with mathematical formulas because formulas produce essentially the same results but are much easier to use. In addition, use of mathematical formulas eliminates the ambiguity inherent in visually reading the field strength curves in the Carey Report. The proposed rule also contains a paragraph (a)(3) that would establish two new requirements for grant of a channel assignment: (1) that the area or population to be served by a proposed transmitter be substantial; and (2) that service gained would exceed that lost as a result of agreements to accept interference. These new requirements are intended to discourage applications proposing impractically small or interference-riddled systems. The only purpose of such applications is to delay or block the expansion of a competitor's system on the same channel. Use of our administrative procedures for such anti-competitive purposes is not in the public interest.

The commenters generally support our proposal to discontinue reliance on Carey Report procedures, although some condition this support on assurance that the mathematical formulas produce results that closely approximate those of the Carey Report procedures. Bell Atlantic notes that, in some cases, there appear to be noticeable differences in interfering contour distances determined by the two methods. It recommends that we conduct a comprehensive analysis and request further specific comment on this issue. In reply comments, Comp Comm, Inc. (Comp Comm) submitted alternative formulas it believes are better than the proposed formulas in providing greater accuracy for stations using very high antenna heights. AK Peters recommends that contours be derived from data for inter-station radials as well as the eight cardinal radials. Joint Commenters recommend we clarify whether overlap determinations will be made solely upon the basis of the eight cardinal radials or on the inter-station radials. Comp Comm points out that we omitted the 0.1 watt ERP floor that is used with the similar cellular formulas in the parameter limits in proposed paragraphs (c)(2) and (d)(2).

Comp Comm recommends that we not adopt the proposed new requirements aimed at preventing applications for small or interference-riddled systems. Comp Comm argues that it is necessary to use field strength ratios to determine service area gains and losses when evaluating cases involving the acceptance of interference. Because the proposed rule defines service and interfering contours in terms of radial distances from transmitter sites rather than median field strengths, there would be no technical basis, Comp Comm claims, upon which to make such determinations.

MetroCall of Delaware and Telocator both suggest that we require applicants for initial and stand-alone 931 MHz paging facilities to propose sufficient antenna height and transmitting power to justify the minimum 20 mile service radius and 50 mile interfering radius that is accorded by both the old and proposed rule, or alternatively, to reduce the service and interfering radii specified in the proposed tables for stations operating with technical facilities less than the equivalent of 1000 Watts at 1000 feet antenna height above average terrain.

After consideration of the comments, we attempted to refine each of the proposed service contour formulas to track even more closely the results produced using the Carey Report procedures. Then we comparatively analyzed the proposed and refined service contour formulas as well as the alternative service contour formulas submitted by Comp Comm. The analysis shows that, for some categories and antenna heights, the refined formulas represent an improvement in Carey-tracking accuracy over their counterpart proposed formulas, but for other categories and antenna heights, the proposed formulas are already optimized and no further refinement is possible. Both the proposed and refined service contour formulas tracked the Carey report curves over the primary ranges of interest much more accurately than the formulas submitted by Comp-Comm. In addition, the Comp Comm formulas are more complex and

would be somewhat more difficult to use. The Comp Comm formulas come closer to the Carey curves only for extraordinarily high antenna heights (610 and 1524 meters), which is the advantage Comp Comm claims for them. However, we do not agree that improvement at very high antenna heights at the expense of accuracy in the primary ranges of interest is a good trade-off. There are very few, if any, stations authorized at such high heights, and it is not clear that the Carey Report propagation model itself, much less any formulas that could be derived from it, is an adequate tool to predict interference in these high altitude cases. Our goal here was not to find an elaborate propagation model that would fit all situations, but rather to replace the relatively subjective Carey Report procedures with a more objective and less burdensome equivalent that would work well in most situations.

Although in our analysis, we did observe small differences between the distances produced by the proposed and refined formulas and those derived from the curves in the Carey Report, these differences are so small that they would not necessitate any significant changes in the technical parameters of proposed systems. Furthermore, these differences in contour distances will not result in interference because they represent a negligible difference in field strength. For these reasons, we adopt the formulas, some as proposed and some as refined. As suggested by Bell Atlantic, we may in the future revisit the subject of interfering contour formulas, with the goal of developing a single, simple formula for all antenna heights to replace the two simple formulas we adopt here. We are adding the 0.1 Watt ERP minimum limits referred to by Comp Comm, which we inadvertently left out of the proposed rule.

With regard to the use of data in addition to that for the eight cardinal radials, we are clarifying this point in new paragraphs (c)(3) and (d)(3). In general, service and interfering contours are determined by calculating distances along the eight cardinal radials using actual data and using linear interpolation as a function of angle to determine distances in other azimuths. To resolve disputed cases, however, such as applications against which a petition to deny has been filed alleging impermissible contour overlap, the following procedure may be used: Contour distances are calculated using actual data along the inter-station radial and along sufficient radials at azimuths above and below the inter-station radial at 2.5° intervals to clearly show whether overlap occurs.

In regard to the suggestion that we require that 931 MHz stations be operated with sufficient power and/or antenna height to "justify" the 32.2 km (20 mile) service area, we did not propose this and do not believe it is necessary at this time. We may consider additional changes to our system for assigning paging channels in the 931 MHz frequency range in a future proceeding.

Also, we are adopting the new requirements aimed at discouraging applications for impractically small or interference-riddled systems. These requirements will not affect the vast majority of applications. We will use them only to weed out obviously questionable technical proposals, where we can not determine that the public interest would be served by a grant of the application. For example, we might question a proposal for a facility that would have a service area totally enveloped by interfering contours of existing non-operationally related stations (even though the applicant agrees to accept such pervasive interference). We disagree with Comp Comm that specified desired-to-undesired signal ratios are needed in order to use these requirements. In disposing of any case that is so close that the disposition of it could hinge on such a detailed field strength analysis, we would probably accord the applicant the benefit of the doubt. Moreover, setting forth detailed technical standards under which the new requirements would operate could encourage parties to file frivolous petitions to deny, defeating the rule's purpose. These types of applications are infrequent now, and should be virtually eliminated by this rule. Accordingly, we believe that a case-by-case approach is in the public interest.

§ 22.539 Additional channel policies.

This rule replaces old Sections 22.16(c), 22.516, and 22.525. The proposed rule would maintain the current practice of authorizing one channel per application cycle, except that licensees would be required to provide service to the public on each authorized channel before applying for an additional channel. This subject received significant attention in the comments and is discussed in the Report and Order.

§ 22.541 Procedures for mutually exclusive 931 MHz paging applications.

In the *Further Notice*, we proposed several processing procedure changes that would apply to applications for 931 MHz paging facilities. Our decision is discussed in the *Report and Order*, and is reflected in this new rule.

§ 22.551 Nationwide network paging service.

This section replaces old Section 22.527. Because all nationwide channels have been assigned, the initial application requirements for network organizers are no longer needed and have been removed.

§ 22.559 One-way paging application requirements.

This new section sets forth the requirements that are peculiar to applications for one-way paging operation in the Paging and Radiotelephone Service. We adopt this rule as proposed.

ONE-WAY OR TWO-WAY MOBILE OPERATION

§ 22.561 Channels for one-way or two-way mobile operations.

This section replaces several paragraphs in old

Section 22.501. AK Peters suggests that the term "public land mobile service" in the first sentence would be made obsolete by the proposed radio service title changes and recommends that the phrase should be changed to "Paging and Radiotelephone Service." We disagree and are not changing this because we are not referring to the formal title of the service here, but rather using a generic term to mean any allowable usage of the channels.

§ 22.563 Provision of rural radiotelephone service upon request.

This rule replaces old Section 22.501(c). AK Peters questions whether the proposed rule was intended to require that stations operating on any of the channels listed under new Section 22.561 be subject to the requirement that rural radio service be made available upon request, or whether this requirement would apply only to stations operating on channels that were originally reserved for wireline common carriers.

We adopt the proposed rule with one modification. We see no reason why this rule should not apply to all channels that are available in both the Paging and Radiotelephone and Rural Radiotelephone Services. We originally added the requirement to provide rural radiotelephone service on request when we removed the rule that had divided these channels into two groups -- one for wireline common carriers and the other for radio common carriers. *See Elimination of the Separate Frequency Allocation Structure in the Public Land Mobile Service (Rule Section 22.501)*, 99 FCC 2d 311 (1984). Our concern then was that the radio common carriers would quickly use up former wireline channels that the wireline common carriers (who typically provide rural radiotelephone service) had been holding in reserve for future rural radiotelephone service needs. Recent filings by BETRS interests indicate that the problem of possible conflicting uses of the 450 MHz paired channels remains a concern. This provision, however, as existing and proposed, does not and would not require that licensees use BETRS, only that they provide some type of rural radiotelephone service upon demand. The record in this proceeding is not sufficient on this topic for us to conclude that the existing requirement should either be strengthened or eliminated.

As for the modification, we note that, as a consequence of our decision in *Flexible Allocation*, these paired channels are now being used mostly for paging operations. Because paging systems typically use the mobile half of the channel pair for control purposes, these systems are generally incapable of providing any two-way radiotelephone service, including rural radiotelephone service. For such systems, there is no practical way to comply with the existing or new rule. Therefore, we modified the proposed rule such that only systems which provide two-way mobile service are required to provide rural radiotelephone service on request.

§ 22.565 Transmitting power limits.

This rule applies the provisions of old Sections 22.505 and 22.506 to stations operating on the one and two-way mobile channels. The proposed rule combined the various inter-related power limit provisions into one section. As with new Section 22.535, the antenna height power limit for each transmitter will now be a function of the predicted coverage of that transmitter. *See* to our discussion of Section 22.535 for the reasons for this change. Also, in connection with our refinement of the mathematical formulas in new Section 22.567, we made corresponding adjustments to the specified average service contour distances in the height power rule -- from 41.8 to 41.6 kilometers for VHF channels and from 30.6 to 30.7 kilometers for UHF channels.

§ 22.567 Technical channel assignment criteria.

This new rule is essentially the same as new Section 22.537, except that it applies to one and two-way mobile operation rather than one-way paging operation. It replaces old Sections 22.15(b)(2)(i) and 22.504, which specified procedures for determining interference between co-channel stations. As with new Section 22.537, the proposed rule would replace the existing Carey Report procedures with mathematical formulas for determining service areas and interfering contours of stations. It would also establish two new requirements for grant of a channel assignment: (1) that the area or population to be served by a proposed transmitter be substantial; and (2) that service gained would exceed that lost as a result of agreements to accept interference (new paragraph (a)(3)). The purpose of these proposals is the same as set forth in our discussion of new Section 22.537, *supra*.

We are adding a new paragraph (g) containing provisions designed to permit one and two-way mobile operation channel assignments in a manner that protects co-channel BETRS facilities from interference. These provisions are largely based on assumptions about BETRS facilities made by IMM in the technical analysis submitted with its comments. This analysis suggests a separation of 110 miles between typical co-channel BETRS central office stations, based on a median field strength of 30 dBμV/m at the subscriber station (IMM derived distances from our UHF TV curves in Part 73 of our rules) and a carrier to interference ratio of 23 dB. The analysis also suggests a separation of 140 miles between a typical BETRS central office station and a typical paging base transmitter. We differ with IMM only in that we consider the assumed reliable service range of a UHF two-way mobile to be 30.7 kilometers (19 miles) rather than 24.1 kilometers (15 miles). Accordingly, we find the typical spacing between a two-way base transmitter in the Paging and Radiotelephone Service and a BETRS central office station should be 231.7 kilometers (144 miles) rather than 225.3 kilometers (140 miles). Although these calculations are based on UHF facilities, the new paragraph will apply to both VHF and UHF facilities. At this time, there are no VHF BETRS facilities. In the event that BETRS equipment is

developed for the VHF frequency range, we will consider any necessary adjustments to the technical parameters at that time.

For the purpose of determining whether there is predicted interference to protected BETRS facilities from a proposed one- or two-way mobile service base or fixed transmitter, new paragraph (g) provides that BETRS central office stations are considered to have a circular "service contour" with a radius of 40 kilometers (25 miles), and that the distance to the interfering contour from a proposed one-way or two-way mobile service base or fixed transmitter is calculated by a mathematical formula that produces results compatible with IMM's suggested separations for all stations (not just typical stations). For determining interference from a BETRS facility to mobile receivers associated with a proposed one or two-way mobile service base transmitter, the BETRS facility is treated as a base station in the Paging and Radiotelephone Service, *i.e.*, service and interfering contours are calculated using the appropriate formulas in paragraphs (c) through (f). In most cases, there will not be interference from a BETRS facility to a one or two-way mobile service facility.

Paragraph (h) contains provisions proposed to replace the policies established in *Flexible Allocation* governing assignment of mobile channels to base and fixed stations.

§ 22.569 Additional channel policies.

This rule replaces old Sections 22.16(a) and (b) and 22.516. It would eliminate traffic load requirements and establish the general policy to assign no more than two channels in an area to a carrier per application cycle. This subject received significant attention in the comments and is discussed in the Report and Order.

§ 22.571 Responsibility for mobile stations.

This rule replaces old Section 22.514. We are eliminating proposed paragraph (a) as unnecessary and combined paragraph (b) into the introductory text.

§ 22.573 Use of base transmitters as repeaters.

This rule replaces old Section 22.517. We adopt it as proposed.

§ 22.575 Use of mobile channel for remote control of station functions.

This rule replaces old Section 22.518. We are modifying the language slightly to clarify that this section applies only for control stations with no more interference potential than a mobile station.

§ 22.577 Grandfathered dispatch service.

This rule replaces old Section 22.519. We note that the Congress recently amended the Act to allow the Commission to remove prohibitions on the provision of dispatch service by common carriers. Until this matter is considered in a notice and comment rule making, we adopt the rule essentially as proposed. We are adding references to FCC Form 489 in paragraph (b) and FCC Form 401 in paragraph (d) to clarify that these forms are required.

§ 22.579 Operation of mobiles across U.S.-Canada border.

This rule replaces old Section 22.509(e). We adopt it as proposed.

§ 22.589 One-way or two-way application requirements.

This new section sets forth the requirements that are peculiar to applications for one-way or two-way mobile operation in the Paging and Radiotelephone Service. We add a provision for protected BETRS facilities, in accordance with our modifications of new Section 22.567; otherwise, we adopt this rule as proposed.

POINT-TO-POINT OPERATION

§ 22.591 Channels for point-to-point operation.

This section replaces the channel listings in old Section 22.501(e), (f), and (m). We adopt this rule as proposed, but add a sentence noting (1) that the 2100-2200 MHz band has been allocated to broadband PCS under Part 24 (originally Part 99) of our rules (ET Docket No. 92-9, 7 FCC Rcd 6886 (1992)); and (2) referencing new Section 22.602.

§ 22.593 Effective radiated power limit.

This section replaces old Section 22.501(f)(2) and (m)(5). We adopt it as proposed, except that for the microwave channels, the radiated power is limited consistent with the provisions of Part 21.

§ 22.599 Assignment of 72-76 MHz channels.

This section replaces old Section 22.501(f)(1). We adopt it as proposed.

§ 22.601 Assignment of microwave channels.

This section replaces old Sections 22.100(d) and 22.501(e). We adopt it as proposed.

§ 22.602 Transition of the 2110-2130 and 2160-2180 MHz channels to emerging technologies.

This section replaces old Section 22.50, which was added to Part 22 since the Notice in this proceeding was adopted. There are no substantial changes to the language of the old rule.

§ 22.603 488-494 MHz fixed service in Hawaii.

This section replaces old Section 22.501(m). We adopt it as proposed.

POINT-TO-MULTIPOINT OPERATION

§ 22.621 Channels for point-to-multipoint operation.

This section replaces the channel listings in old Section 22.501(g) and (k). We update the list to add channels that have been removed from trunked mobile operation.

§ 22.623 System configuration.

This section replaces the portions of old Section 22.501(g)(1) and (k)(6) concerning system configuration and channel selection. We adopt it as proposed.

§ 22.625 Transmitter locations.

This section contains all existing restrictions on the locations of point-to-multipoint transmitters. These location restrictions, which were previously mixed in with power restrictions in old Section 22.501, are necessary to prevent co-channel interference or to protect television reception. We adopt it as proposed.

§ 22.627 Effective radiated power limits.

This section contains all existing restrictions on the effective radiated power of point-to-multipoint transmitters. These power restrictions, which were previously mixed in with location restrictions in old Section 22.501, are necessary to prevent co-channel interference or to protect television reception. We adopt it as proposed.

470-512 MHZ TRUNKED MOBILE OPERATION

§ 22.651 470-512 MHz channels for trunked mobile operation.

This section replaces the channel listings in old Section 22.501(j). We updated the list to delete channels that have been converted to point-to-multipoint operation.

§ 22.653 Eligibility.

This section replaces old Section 22.501(j)(1). We adopt it as proposed.

§ 22.655 Channel usage.

This section replaces old Section 22.501(j)(2) and (12). We adopt it as proposed.

§ 22.657 Transmitter locations.

This section contains all existing restrictions on the locations of 470-512 MHz base stations used for trunked mobile operation. These location restrictions, which were previously mixed in with power restrictions in old Section 22.501, are necessary to prevent co-channel interference or to protect television reception. We adopt it as proposed.

§ 22.659 Effective radiated power limits.

This section contains all existing restrictions on the effective radiated power of 470-512 MHz base stations used for trunked mobile operation. These power restrictions, which were previously mixed in with location restrictions in old Section 22.501, are necessary to prevent co-channel interference or to protect television reception. We adopt it as proposed.

Subpart F - Rural Radiotelephone Service

§ 22.701 Scope.

This section states how the rules in this subpart are applied. We adopt it as proposed.

§ 22.702 Eligibility.

This section comprises the eligibility provisions of old Sections 22.600 and 22.601(a)(4). The latter reference is to the existing requirement that only local exchange carriers that have been state certified to provide basic exchange telephone service (or others having state approval to provide such service) in the pertinent area are eligible for Basic Exchange Telephone Radio System (BETRS) authorizations. See *Basic Exchange Telecommunications Radio Service* 3 FCC Rcd 214, 217 at paras. 26-27 (1988). This requirement was erroneously omitted in the text of the proposed rule and marked for removal in the NPRM rule cross reference.

§ 22.703 Separate rural subscriber station authorizations.

This section incorporates the subscriber station provisions of old Section 22.600. We adopt it as proposed.

§ 22.705 Rural radiotelephone system configuration.

This section replaces old Section 22.606. We adopt it as proposed.

§ 22.709 Rural radiotelephone application requirements.

This section replaces old Sections 22.608 and 22.609 and portions of old Section 22.15. We adopt it essentially as proposed, but we add criteria to paragraph (d) for BETRS applications. We also add a new paragraph (e) requiring, for applications requesting more than two channels, an exhibit showing (1) the probability of blocking for the proposed service,

including the calculations and data used to derive it, and (2) the impact on current and projected future demand for public paging, two-way mobile and rural radiotelephone services.

§ 22.711 Provision of information to applicants.

This section replaces old Section 22.609(e). We adopt it as proposed.

§ 22.713 Construction period for rural radiotelephone stations.

This section replaces old Section 22.43(a)(2) as applicable to rural radiotelephone stations. We adopt it as proposed.

§ 22.715 Technical channel assignment criteria for rural radiotelephone stations.

This section refers the reader to new Section 22.567, which contains technical channel assignment criteria affecting both services to which the channels listed in Section 22.725 are allocated. Because new Section 22.567 is somewhat lengthy, we decided to cross reference it rather than to repeat it here. We adopt it as proposed.

§ 22.717 Procedure for mutually exclusive applications in the Rural Radiotelephone Service.

This section essentially provides that mutually exclusive applications in the Rural Radiotelephone Service are to be processed using a first-come, first-served procedure. The reasons for this rule are given in the *Report and Order*.

§ 22.719 Additional channel policy.

In the NPRM, we proposed the same additional channel policy for Rural Radiotelephone Service as for one-way and two-way mobile operation in the Paging and Radiotelephone Service. See 7 FCC Rcd 3658,3671 (1992). This proposal received significant opposition in the comments and is addressed in the Report and Order. Consistent with our decision there, we are adding this new section for the Rural Radiotelephone Service instead of applying the Paging and Radiotelephone Service policy. This section provides that no more than two channel pairs may be assigned to new rural radiotelephone central office stations unless there are more than eight rural subscriber stations to be served. Additional channel pairs may be assigned, however, provided the need for these additional channel pairs is established and fully justified in terms of achieving the required grade of service for basic exchange service, and the applicant demonstrates that after assignment of the requested channels, there would still be ample spectrum available in the area to meet realistic estimates of current and projected future demand for paging, two-way mobile, and rural radiotelephone services. In the case of conventional rural radiotelephone central office stations, the applicant must explain why BETRS technology is not being used instead of additional channel pairs.

CONVENTIONAL
RURAL RADIOTELEPHONE STATIONS

§ 22.725 Channels for conventional rural radiotelephone stations.

This section replaces old Section 22.601(b). We adopt it as proposed, except that the reference in paragraph (c) is corrected to read § 22.729 rather than § 22.719.

§ 22.727 Transmitting power limits.

This new section sets forth the transmitting power limits for conventional rural radiotelephone stations. Although the old rules did not provide power limits specifically for rural radiotelephone stations, our policy has been to apply old Sections 22.505 and 22.506 (the power limits for two-way operation) when necessary. This section incorporates the relevant portions of new Section 22.565, which replaces these two old sections.

§ 22.729 Meteor burst propagation modes.

This section replaces old Section 22.601(g). We adopt it as proposed.

§ 22.731 Emission limitations.

This section replaces old Section 22.604(b). We adopt it as proposed. It should be noted that old Sections 22.604(a) and 22.605(c) have been combined into new Section 22.357, and that the audio filter requirements of old Section 22.605 have been superseded by the emission mask requirements of new Section 22.359.

§ 22.733 Priority of service.

This section replaces old Section 22.607. We adopt it as proposed.

§ 22.737 Temporary fixed stations.

This section replaces old Section 22.610. We adopt it as proposed.

BASIC EXCHANGE TELEPHONE RADIO SYSTEMS

§ 22.757 Channels for basic exchange telephone radio systems.

This section incorporates paragraph (c) and other provisions of old Section 22.601. Because of a lack of any licensing activity on the 816-865 MHz channels, we requested comment in the NPRM as to whether these channels are useful for BETRS or whether they should be reallocated for another purpose. Most commenters addressing this question indicated that these channels are of no use for BETRS, however, one commenter stated that the channels should remain available for

possible future use. The lack of interest in these channels apparently stems not only from the location restrictions that protect Part 90 radio systems, but also from the fact that the two manufacturers of BETRS equipment have not designed BETRS equipment for any frequency range other than 454-459 MHz. However, because we have received requests for additional spectrum for BETRS from USTA and others, we retain the 816-865 MHz BETRS allocation for the present.

§ 22.759 Power limit for BETRS.

The commenters indicate that BETRS central office transmitters are generally operated at low powers. IMM uses 24 Watts ERP for its technical analysis. To be consistent with the 40 km service radius we are according to BETRS central office transmitters, we are limiting the ERP of BETRS central office transmitters to the equivalent of 24 Watts ERP at 152.4 meters HAAT per radio frequency (RF) channel (as determined by the formula: $ERP_W = 557{,}418 \div h_m^2$). BETRS transmitters also are to be limited to an absolute maximum of 3500 Watts ERP per UHF channel and 1400 Watts ERP per VHF channel.

Subpart G - Air-ground Radiotelephone Service

§ 22.801 Scope.

This section replaces old Section 22.1100 and states how the rules in this subpart are applied. We adopt it as proposed.

§ 22.803 Air-ground application requirements.

This new section replaces portions of old Sections 22.13 and 22.15 applicable to air-ground services, without substantive change. We are not adopting the rules in proposed Section 22.803 concerning procedures for mutually exclusive applications, because the proposals concerning processing of mutually exclusive applications for all commercial mobile radio services in the *Transition Notice* supersede our original proposal.

GENERAL AVIATION AIR-GROUND STATIONS

§ 22.805 Channels for general aviation ground stations.

This section replaces old Section 22.521(a). We adopt it as proposed.

§ 22.809 Transmitting power limits.

This section incorporates the power limits in old Section 22.521(c) and a new minimum power for ground stations. We are clarifying paragraph (a) by adding the phrase "except as provided in § 22.811." Otherwise, we adopt it as proposed.

§ 22.811 Idle tone.

This section is the idle tone requirement of old Section 22.521(c). We adopt it as proposed.

§ 22.813 Technical channel assignment criteria.

This section replaces the channel allotment table in old Section 22.521(b). The purposes of the old channel allotment table were to insure that nationwide in-route service would be possible, that channels would be initially allotted according to the level of air traffic activity, that co-channel interference would not occur for aircraft at low and moderate altitudes, and that each ground station would have a substantial service volume. However, under the previous system, changes to the table could be accomplished only through rule making procedures similar to those used for FM broadcast channel allotments. Because the allotment of Air-ground Radiotelephone Service channels does not involve the same considerations under Section 307(b) of the Act as does allotment of FM broadcast channels, the use of rule making procedures to amend the air-ground table has proven to be unduly burdensome to licensees and has discouraged full development of the service. Furthermore, under the old system, only one carrier could obtain an authorization to operate air-ground transmitters at any given location, even where more than one channel was allotted to a location. The reason for this policy was to prevent interference on the common signaling channel (454.675/459.675 MHz), however, it also ensured that each carrier in a location had a monopoly on service at that location, and it sometimes resulted in channels allotted to a location going unused (if the licensee authorized to use one or more other channels at that location chose not to apply for them). In addition, the unused allotments precluded use of the affected channels at other nearby locations. Advancement of technology and operating experience have now shown that the common signaling channel can be successfully shared by multiple licensees at a location.

We proposed the rules in this section (together with those in new Section 22.817) to replace the allotment table and its associated procedures and policies. These rules are designed to further the following goals: (1) to maintain nationwide in-route coverage, by prohibiting the future assignment of more than half of the channels in any general geographic area; (2) to limit co-channel interference for aircraft flying at low and moderate altitudes, by maintaining spacing between co-channel ground stations; (3) to establish and preserve competition among air-ground carriers, by allowing the possibility of multiple providers at any location and by preventing any one carrier from obtaining exclusive use of more than half of the channels in any general geographic area; and (4) within the constraints of the first three goals, to allow flexibility in ground station locations to meet demand for general aviation air-ground radiotelephone service, by eliminating the allotment table and the requirement for rule making proceedings to amend it.

In general, the comments support the proposed rule. However, IMM opposes adoption of the proposed air-ground technical channel assignment criteria because it believes that the 454 MHz air-ground channels should be reallocated for use by BETRS. IMM requests that we not implement the air-ground rule before we consider a petition filed by USTA, *et al.*, requesting that the Commission allow shared use of 454 MHz air-ground channels by BETRS. Adopting the new criteria, IMM argues, would promote the expansion of air-ground service on the 454 MHz channels at a time when IMM believes the Commission should be discouraging such expansion. IMM believes that the newer 800 MHz air-ground systems will make the 454 MHz stations obsolete.

We adopt the rule as proposed. Although sharing of the air-ground spectrum with BETRS may be technically feasible in some areas, we believe that air-ground licensees who have been constrained for many years by the outdated allotment table and burdensome administrative procedures should have an opportunity to optimize their channel assignments and ground station locations under the new rules before we consider the impact that sharing with BETRS would have. We also believe that BETRS licensees should utilize the spectrum already allocated for BETRS in the VHF and 800 MHz ranges before seeking to displace the licensees of an established mobile service. We do not agree that a manufacturer's decision to offer BETRS equipment in only one frequency range, and not in the other two ranges already allocated for BETRS, is sufficient justification to allocate more mobile spectrum in the 454 MHz range for BETRS use.

§ 22.815 Construction period for general aviation ground stations.

This section contains the provision of old Section 22.43(a)(2) as applicable to these stations. We adopt it as proposed.

§ 22.817 Additional channel policies.

This new section is similar to new Section 22.539. Its purpose is explained in our discussion of new Section 22.813, *supra*. We adopt it as proposed.

§ 22.819 AGRAS compatibility requirement.

This section replaces old Sections 22.522 and 22.523 and serves to update our rules to specify the compatibility standard now in use by the vast majority of ground stations. Global Wulfsberg, in informal comments, advises that a few ground stations are still using the older standard, and that the phase-out date for the older standard should be 1996 rather than 1994. We made this change.

§ 22.821 Authorization for airborne mobile stations.

This section replaces old Sections 22.9(c)(2) and 22.15(i)(3). It requires separate authorizations for mobile stations using the 459 MHz channels. It also requires airborne mobile subscribers to file FCC Form 409 in order to obtain such an authorization. We adopt it as proposed.

COMMERCIAL AVIATION AIR-GROUND SYSTEMS

§ 22.857 Channel plan for commercial aviation air-ground systems.

This section replaces old Sections 22.1105 and 22.1107(a). Although the Commission allocated this portion of the 800 MHz spectrum for air-ground use so that telephone service could be provided to passengers on commercial aircraft, GTE and some other commenters objected to the proposed wording stating this fact. Their concern is that we are somehow trying to prevent these systems from also serving general aviation aircraft. This is not the case, and we are adding language to clarify that commercial aviation air-ground systems may serve any type of aircraft. However, the most important difference between the older air-ground stations using the 454 MHz allocation and the relatively new air-ground systems utilizing the 800 MHz allocation is that the former are prohibited from serving commercial airline passengers (because of insufficient traffic capacity to provide a satisfactory service), while the latter were created expressly for the purpose of providing service to commercial airline passengers. Although the newer systems have more traffic capacity, we do not expect them to supplant the older stations in the near term, because of the substantial installed base of customers and investment in the older system and because the two services are focused on different portions of the aviation market at this time. If and when usage of the general aviation air-ground systems declines significantly in favor of other alternatives, we could then consider the reallocation of the 454-459 MHz channels for BETRS or other uses.

§ 22.859 Geographic channel block layout.

This section replaces old Section 22.1109. Discrepancies in the geographical coordinates in the proposed rule were pointed out by the commenters. We have corrected them; otherwise, we adopt this section as proposed.

§ 22.861 Emission limitations.

This section replaces old Section 22.1111. We adopt it as proposed.

§ 22.863 Transmitter frequency tolerance.

This section replaces old Section 22.1113. The commenters pointed out our inadvertent error in specifying 10 ppm instead of 0.1 ppm and 0.2 ppm. We have corrected these errors; otherwise we adopt this section as proposed.

§ 22.865 Automatic channel selection procedures.

This section replaces old Section 22.1115. We adopt it as proposed.

§ 22.867 Effective radiated power limits.

This section replaces old Section 22.1117. We adopt it as proposed.

§ 22.869 Assignment of control channels.

This section replaces old Section 22.1119. We adopt it as proposed.

§ 22.871 Control channel transition period.

This section replaces old Section 22.1121. We removed paragraph (a) from the proposed rule because the date in that paragraph, July 9, 1993, has passed, and the licensee of the experimental system notified the Commission that the requirements of that paragraph have been met. Otherwise, we adopt the rule as proposed.

§ 22.873 Construction period for commercial aviation air-ground systems.

This section replaces old Section 22.43(e). We adopt it as proposed.

§ 22.875 Commercial aviation air-ground system application requirements.

This section replaces old Section 22.1102. We removed paragraph (c)(4) from the proposed rule because system capacity is affected by the occupancy level of the other systems and can not be accurately projected. Otherwise, we adopt this section as proposed.

Subpart H - Cellular Radiotelephone Service

§ 22.900 Scope.

This section replaces old Section 22.900 and states how the rules in this subpart are applied. We adopt it as proposed.

§ 22.901 Cellular service requirements and limitations.

This section consolidates rules that require cellular licensees to provide service to subscribers in good standing, including roamers (old Section 22.911), other rules related to service provided by cellular carriers (old Sections 22.914 and 22.912(c)), and provisions for alternative cellular technologies and auxiliary service (old Section 22.930). Since the NPRM was released, we have adopted rules (old Section 22.914(a)) governing resale of cellular service (*See Report and Order in CC Docket No. 91-33*, 7 FCC Rcd 4006 (1993), and amended old Section 22.930 to eliminate the notification requirement and to specifically authorize PCS as an auxiliary service (*See Amendment of the Commission's Rules to Establish New Personal Communications Services*, (*Second Report and Order*), 8 FCC Rcd 7700 (1993). These recent rule changes are incorporated into this new section.

USTA opposes the proposal to eliminate the restriction in old Section 22.930 limiting fixed service to BETRS because it alleges this would infringe upon state authority. It claims that whenever a cellular operator offers fixed service, it is offering exchange service and that determinations as to who should be granted entry into telephone exchange service are reserved to the States under Sections 2(b) and 7 of the Communications Act. (47 U.S.C. §§ 152(b) and 157).

USTA's concerns are unfounded. It is well established that Section 2(b) of the Act does not prohibit the Commission from licensing radio common carrier services. Section 2(b) allows the States to regulate certain aspects of intrastate commerce, such as the rates charged for intrastate calls by cellular radio or local telephone companies. The Commission may preempt State regulations when the interstate and intrastate aspects of a service are inseparable and state regulations would thwart or impede federal policies. *See, e.g., Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 375 n.4 (1986) and *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990). Section 7 of the Act, which USTA cites, states in Section 7(a): "It shall be the policy of the United States to encourage the provision of new technologies and services to the public." Thus, the relevant law gives us full authority to determine which entities should be licensed for fixed services. Further, our NPRM in this proceeding observed that "[c]arriers desiring to provide an incidental fixed service must comply with state certification requirements, if any." 7 FCC Rcd at 3672. We note that under old Section 22.930, we routinely grant waivers of the rule where appropriate. Thus, we are simply codifying our previous practice to avoid needless waiver requests.

§ 22.903 Conditions applicable to former Bell operating companies.

This section replaces old Section 22.901(b), (c), and (d). NewVector proposes removal of the requirement in paragraph (d) that former Bell Operating Companies file copies of interconnection agreements as this would result in duplication of filings required under old Sections 22.913, 22.923, and proposed Section 22.953(a)(5)(x). We reject this proposal because the interconnection filings required by paragraph (d) are different from the interconnection submissions required for FCC Form 401s by other sections of our Rules, such as new Section 22.953(a)(5)(x). If, when filing an FCC Form 401, it so happens that an interconnection document required by our processing rules, such as Section 22.953(a)(5)(x), is identical to a document already submitted to the Commission pursuant to new Section 22.903 of the Rules, the applicant can incorporate by reference the document filed pursuant to Section 22.903.

§ 22.905 Channels for cellular service.

This section replaces, in old Section 22.902, paragraph (a), the introductory text of paragraph (b), paragraphs (b)(1), (b)(2), and (c). We remove proposed paragraph (c) because it is redundant with new Section 22.352. We also remove the word "authorized" from paragraph (b) as unnecessary and possibly confusing in view of our decision in this proceeding to eliminate the requirements that licensees notify the Commission of cell sites that do not affect the CGSA. These cell sites, while authorized (licensees should not operate any unauthorized cell sites), may not be listed on any authorization.

§ 22.907 Coordination of channel usage.

This section replaces and simplifies old Section 22.902(d). We are removing some unnecessary language from proposed paragraph (b), and add the words "by letter" to clarify that licensees should not file an FCC form for this purpose.

§ 22.909 Cellular markets.

This section defines the cellular market areas and references public notices that list them and the counties they comprise. Bell Atlantic suggests that the rule include the title and date of the public notices to assist in identifying them. We have made this change.

§ 22.911 Cellular geographic service area.

This section replaces old Section 22.903, which has been amended several times in CC Docket No. 90-6 since the NPRM was released. We incorporated these amendments in the new rule.

BellSouth suggests that we (1) remove the 75% coverage requirement; (2) indicate that service is presumed within any "dead spots" revealed by alternative propagation studies; (3) define "unserved area" as any area not covered by a CGSA where the five-year build-out period has expired. Some commenters noted that we omitted the 0.1 Watt minimum power requirement from proposed paragraph (a)(4).

We agree that the rule requiring certain MSA licensees to maintain a CGSA that covers 75% or more of the area or population of the MSA is no longer necessary. Through our recently established unserved area licensing procedures, eligible entities may apply for any significant areas left unserved by these MSA licensees at the end of their five-year build-out periods. Accordingly, we remove the 75% coverage requirement. Also, we are restoring the "dead spot" language and the 0.1 Watt ERP minimum, both of which appear in old Section 22.903. BellSouth's suggestion regarding the definition of "unserved areas" is incorrect. An unserved area is a geographical area where there is no CGSA on a channel block. The fact that the initial cellular licensee on a channel block in a market has, for five years, an exclusive right to expand its CGSA into unserved area in its market does not make that unserved area "served." Until an area is within a CGSA, it is considered unserved.

We are adding more detail concerning alternative propagation submissions under paragraph (b). These criteria for alternative propagation submissions were set forth in our *Second Report and Order in CC Docket No. 90-6*, 7 FCC Rcd 2449 (1992). We received several submissions that did not meet these criteria, however, with the result that the staff had to request additional information or deny the applications for modification of CGSA. We believe that including all criteria and requirements for alternative propagation submissions in this section makes them more accessible to persons who prepare such submissions.

In our *Memorandum and Opinion on Reconsideration in CC Docket. No. 90-6*, 8 FCC Rcd 1363 (1993), we added a paragraph (f) to old Section 22.903 to codify our policy in regard to interference protection afforded to the service of cellular systems within their CGSAs. We include this paragraph as new Section 22.911(d).

§ 22.912 Service area boundary extensions.

This section replaces old Section 22.903(d) governing service area boundary (SAB) extensions. SAB extensions are areas that are within the service area boundary of a cell, as determined in accordance with new Section 22.911(a), but are outside of the cellular market boundary. NewVector and BellSouth note that the subject of *de minimis* SAB extensions should be included in this section, as well as contract SAB extensions and unserved area system extensions. We agree. We restore the missing paragraph addressing *de minimis* extensions. Also we are modifying some of the language in this section to reflect the clarifications of old Section 22.903 that were made in CC Docket No. 90-6 since the NPRM was released.

§ 22.913 Effective radiated power limits.

This section replaces old Sections 22.904 and 22.905. We proposed to eliminate the existing provision which exempts cellular base transmitters from the height-power limit where coordination with all co-channel systems within 75 miles is carried out. We reasoned that, in light of our decision to increase the maximum power limit from 100 to 500 Watts in *Liberalization of Technology and Auxiliary Service Offerings in the Cellular Radio Service* (*Auxiliary Cellular Order*), 3 FCC Rcd 7033 (1988), *recon.*, 5 FCC Rcd 1138 (1990), this exemption was no longer necessary.

The majority of commenters addressing this proposal favor retention of the height-power exemption. They argue that this provision allows carriers flexibility to use larger cells in rural areas where the probability of interference is low, and thus build out their systems efficiently and economically. We are persuaded by these arguments to retain the existing provision

which exempts cellular base transmitters from the height-power limit where the licensee has coordinated the higher operating power with all affected co-channel carriers within 121 kilometers (75 miles). Exercise of this exemption has not thus far resulted in interference, and retaining it is consistent with our overall policy of encouraging carriers to coordinate technical operating parameters.

Some of the commenters noted that the distance specified in proposed paragraph (b), 41.5 kilometers (26 miles), is inappropriately small for the Gulf of Mexico market and slightly too large for all other markets. These commenters are correct. We recalculated using 152.4 meters antenna HAAT and 500 Watts ERP and found that the distances should be 79.1 kilometers (49 miles) for the Gulf of Mexico MSA cellular systems and 40.2 kilometers (25 miles) for all other cellular systems. We are modifying paragraph (b) accordingly.

§ 22.915 Modulation requirements.

This section replaces old Sections 22.906 and 22.907(a). We remove the words "frequency modulated" from paragraph (a) because other forms of angle modulation can be used. Otherwise, we adopt this rule section as proposed.

§ 22.917 Emission limitations for cellular.

This section replaces old Section 22.907(b) through (j). We adopt it as proposed.

§ 22.919 Electronic serial numbers.

The purpose of this new section is to deter cellular fraud by requiring that the Electronic Serial Number (ESN) unique to each cellular phone be factory set, inalterable, non-transferable, and otherwise tamper-proof and free of fraudulent manipulation in the field. This subject received substantial attention from the commenters and is discussed in the Report and Order.

§ 22.923 Cellular system configuration.

This section replaces paragraph (c) and the introductory text of paragraph (a) of old Section 22.911. NewVector and Bellsouth suggest that the use of cellular repeaters should be mentioned in this section. We agree and modify the rule to provide that base transmitters communicate with mobile stations "directly or through cellular repeaters." Also, we substitute the word "transmitters" for "stations" for consistency with the rest of Part 22.

§ 22.925 Prohibition on airborne operation of cellular telephones.

This section replaces old Section 22.911(a)(1). We adopt it as proposed.

§ 22.927 Responsibility for mobile stations.

This section replaces old Section 22.912(a) and (b). Bell Atlantic objects to the language in paragraph (a) that imposes on cellular carriers the responsibility for installation, proper maintenance, and repair of mobile equipment they provide for use by their subscribers. Bell Atlantic contends that cellular customer premises equipment (CPE) providers should not be treated differently from other CPE providers. McCaw recommends that we omit language referring to the receipt of service pursuant to tariff provisions because cellular carriers do not file federal tariffs, and many states do not require the filing of tariffs by cellular operators.

Old Section 22.912(a) provides that cellular carriers are normally responsible for proper installation, repair, and maintenance of mobile equipment unless the subscriber provides the equipment. Upon further consideration, we find that this existing requirement is no longer needed. Mobile equipment owned by the subscriber (not the carrier) appears to be the rule rather than the exception. We leave it to consumers to determine the arrangements they prefer for installation, repair, and maintenance of equipment they own. Therefore, we remove proposed paragraph (a) and consolidate the remaining provisions of this section.

As to tariff submissions, our recent *CMRS Order*, *supra*, specifically directs mobile radio common carriers not to submit any tariffs with this agency. *See* 9 FCC Rcd 1411 at 1479-81. Our directive in that order was made pursuant to recent amendments made to Sections 3(n) and 332 of the Act.

§ 22.933 Cellular system compatibility specification.

This section replaces old Section 22.915. NewVector and Bellsouth argue that the rule limits flexibility in implementing new technologies by requiring that cellular systems conform to existing compatibility requirements. NewVector recommends adding language providing that services provided pursuant to new Section 22.901(d) are exempt from the compatibility specifications. This rule should not be misinterpreted as limiting the implementation of new technology. We are adding the suggested language.

§ 22.935 Procedures in comparative renewal proceedings.

The Notice in this proceeding proposed to revise old Section 22.916 which delineates expedited hearing procedures for cellular applications. Specifically, we proposed to delete paragraphs (a)(1)-(a)(4), which are applicable only to the top 30 cellular markets, and retain the procedures in paragraphs (b)(5)-(b)(9) for comparative renewal hearings. Because our other hearing procedures for comparative renewal hearings are contained in old Section 22.942 of our rules, we have decided, in the interest of simplicity and continuity, to combine the provisions of old Section 22.942 with the provisions of proposed Section 22.935 under new

Section 22.935.

The proposed rules contained in Appendix B of the NPRM did not include any rules governing the conduct of comparative renewal proceedings, except for proposed Section 22.935. Such rules had been recently adopted in *Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Telecommunications Service* (*Report and Order*), 7 FCC Rcd 719 (1992), (*Cellular Renewal Proceeding*). Those rules include, *inter alia*, old Section 22.40(b) concerning the transfer or assignment of cellular licenses, old Section 22.917(g) concerning the financial qualifications of any applicant that files a competing application against the renewal application of an incumbent cellular licensee, old Section 22.940 concerning other basic qualifications standards for such competing applicants, old Section 22.941 concerning criteria for obtaining a renewal expectancy and for comparing the applicants, old Section 22.942 concerning hearing procedures for comparative hearing proceedings, and old Sections 22.943-45 concerning procedures for settling comparative renewal proceedings. Old Sections 22.941 and 22.942 were revised by our *Memorandum Opinion and Order on Reconsideration in CC Docket No. 90-358*, 8 FCC Rcd 2834 (1993), *petitions for recon. pending*. Old Sections 22.944-45 were superseded by old Sections 22.927 and 22.929, which were adopted in our *Third Report and Order and Memorandum Opinion and Order on Reconsideration in CC Docket No. 90-6*, 7 FCC Rcd 7183 (1992). All of the foregoing rules are still in effect, except as noted above. Appendix B of this *Report and Order* contains the substance of these rules, even though the rule numbers have been changed.

§ 22.936 Dismissal of applications in cellular renewal proceedings.

This new section contains the provisions of old Section 22.943. There is no substantive change.

§ 22.937 Demonstration of financial qualifications.

This section replaces old Section 22.917 and sets forth uniform financial requirements for applications for authority to operate new cellular systems, pursuant to *Unserved Areas*, 6 FCC Rcd 6185 (1991). The new rule applies to all applications for new cellular systems, except that any initial authorizations subject to further selection procedures will be governed by the rules in effect at the time the applications were filed, pursuant to new Section 22.959.

NewVector states that if we did not intend to change substantially the nature of the costs that an assignee or transferee must be able to cover, we should amend the introductory paragraph to be consistent with current rules regarding transfers and assignments of constructed cellular systems. We agree and have amended the relevant language. NewVector argues, in addition, that paragraph (g) should be broadened to include *pro forma* transactions. We agree and modify the relevant language, which is now contained in paragraph (h).

§ 22.939 Site availability requirements for applications competing with cellular renewal applications.

This new section contains the provisions of old Section 22.940. There is no substantive change.

§ 22.940 Criteria for comparative cellular renewal proceedings.

This new section contains the provisions of old Section 22.941. There is no substantive change.

§ 22.941 System identification numbers.

We proposed this new section to codify our existing policies and procedures in regard to assigning and coordinating the use of system identification numbers (SIDs) required by the cellular compatibility specification. We proposed to require licensees to notify us of the use of additional SIDs by filing FCC Form 489, rather than by letter, and to charge a fee for this service. As an alternative, we also suggested that this coordination function could just as well be performed by an industry organization rather than by the Commission.

Unfortunately, no organization offered to take over the SID coordination function. NewVector stated that it believes that the Commission should be responsible for this function. McCaw recommends that this rule section provide that each SID assigned to a cellular system may only be used by other cellular systems pursuant to an agreement between the two.

We will continue to assign and coordinate SIDs, and we adopt our proposal to require licensees to notify us of the use of additional assigned SIDs using FCC Form 489. To obtain an additional unassigned SID, a licensee must apply for it using FCC Form 401. This will entail a processing fee of $70 per notification or application (*see* fee schedule in Section 1.1105). We agree with McCaw that the use of one system's SID should be allowed only pursuant to an agreement between the two, and we add the necessary language to paragraph (b).

§ 22.942 Limitations on interests in licensees for both channel blocks in an area.

This rule replaces old Section 22.902(b)(5). There is no substantive change.

§ 22.943 Limitations on assignment of cellular authorizations.

This rule replaces existing rules, such as old Section 22.920, governing the assignment of cellular authorizations.

As initially proposed, paragraph (b) of Section 22.943 would have prohibited the sale, transfer, assignment or other

alienation of any application to operate a new cellular system in a Rural Service Area (RSA). NewVector and BellSouth recommend adding language to paragraph (b) that would extend the ban on the sale, transfer, or other alienation of any application to operate a new cellular system to unserved area applications. We have already adopted this recommendation in another rule making proceeding which revised old Section 22.922 in 1992. *See Amendment of Section 22.922 of the Commission's rules to permit limited transfers and assignments of applications in Rural Service Areas (Report and Order)*, 7 FCC Rcd 7539 (1992). Thus, the existing version of old Section 22.922(a) contains the general prohibition against the sale, transfer or other alienation of any interest in an RSA application and provides for several exceptions to that general prohibition. In addition, old Section 22.922(b) applies the provisions of old Section 22.922(a) to unserved area applications. Clearly, the prohibitions contained in Section 22.922 pertain to applications which have not been granted, whereas the subject matter of Section 22.943, as adopted today, concerns limitations on the assignment of cellular authorizations. In this light, the language of Section 22.922 will now be contained in a separate rule, namely, new Section 22.944 of our Rules.

§ 22.945 Interests in multiple applications.

This rule replaces old Section 22.921. We adopt this rule as proposed.

§ 22.946 Service commencement and construction periods for cellular systems.

This rule replaces old Section 22.43(c) concerning the construction periods and other service initiation requirements for cellular systems. The proposed rule reflects the existing requirements, but unfortunately after further examination, we find that it also contains errors and is somewhat confusing. Like many of the cellular rules, much of the confusion results from the fact that often different rules apply to cellular licensees depending upon when they applied for an initial license. We have simplified paragraph (b) of new Section 22.946 to clarify the construction period for specific facilities.

Proposed Section 22.946(a)(2) requires a licensee to notify the Commission using FCC Form 489 when it has commenced providing service to the public. GTE recommends adding language to the effect that the foregoing FCC Form 489 must be mailed no later than 15 days after service begins to be consistent with proposed Section 22.142(b). We agree and have added such language. Southwestern Bell requests that we state that if a new cellular system consolidates with another cellular system, the consolidation will, in itself, be considered compliance with the commencement of service requirement. This request would bypass the requirement that an initial cellular system have at least one unaffiliated subscriber by the end of its construction period. We do not perceive this requirement as onerous. Therefore, the request is denied.

§ 22.947 Five year build-out period.

This section replaces paragraphs (a)(1)(i) and (f) of old Sections 22.31, 22.925, and 22.926. Per our discussion of new Section 22.99, *supra*, we will now refer to the five year "build-out" period, rather than the five year "fill-in" period, and have retitled this section accordingly. We proposed to consolidate our rules concerning the five year build-out period for first-in-market cellular systems with rules concerning partitioned markets in which the first licensee has allowed one or more additional carriers to establish independently authorized cellular systems within the market during the five year build-out period.

NewVector and Bellsouth recommend revision of proposed paragraph (a) to replace the reference to unserved area with the phrase "area where the licensee's CGSA does not extend." Apparently, they believe that unserved area cannot exist in a market until after the five year build-out period has expired. We do not change the language as suggested because, as explained in the discussion of new Section 22.99, *supra*, unserved area means area where there is no CGSA, without regard to the five year build-out period. There usually is some unserved area on each channel block in each market during the five year build-out period, however, paragraph (a) affords the first-in-market licensee on that channel block an exclusive right to expand its system into the unserved area during its five year build-out period. It does this by stating that the Commission will not accept any applications for new cellular systems in this unserved area during the five year build-out period (other than those filed pursuant to a partitioning agreement), not by deeming the unserved area to be served.

Bell Atlantic and BellSouth recommend that paragraph (b) of the proposed rule should be clarified to indicate that some partitioned markets resulted from market settlements. We agree, however, we put this clarification in the definition of **partitioned market** under new Section 22.99. BellSouth recommends that the rule explicitly state that the additional licensees in partitioned markets must file system information updates (SIU). This suggested revision is unnecessary, because the rule clearly requires the licensee of "each system" to file an SIU. We remove the requirement in paragraph (c), however, for licensees to submit an updated channel usage chart. We have found that these charts are not necessary for the unserved area licensing process. We also change the last sentence in paragraph (c)(1) to clarify that the date on the SIU map must be a date when the depictions on the map were accurate, regardless of when the map is revised or prepared.

§ 22.949 Unserved area licensing process.

This section replaces old Sections 22.31(a)(1)(ii) and (b)(2)(iii), 22.33(b), 22.902(b)(3) and (b)(4), and 22.918(c). We proposed to consolidate in this section rules governing the two phase unserved area application process. Our proposed rule inadvertently omitted several of the Phase I and Phase II processing rules in old Section 22.902(b)(4), *e.g.*, the rule

allowing a Phase I cellular unserved area licensee to file one major application to modify its authorization before the Phase II process begins. We include most of these overlooked Phase I rules as new paragraphs (a)(3) and (a)(4) and Phase II rules as new paragraph (b)(3).

NewVector recommends that we include the provisions of old Section 22.918(c)(2) in this section. Old Section 22.918(c)(2) provides that (1) the Commission will accept minor amendments to Phase II initial cellular applications, and that (2) if an applicant files a major amendment to a Phase II application which eliminates existing mutual exclusivity without creating new mutual exclusivity, the filing date (which is used for the first come, first served process) would remain the same, rather than changing to the date the amendment was received. In regard to the first provision, it is unnecessary to add it here because the general provisions of new Section 22.122 allow applicants to amend Phase II applications as a matter of right. The second provision concerning the filing date stems from old Section 22.23(g), which encouraged the amendment of applications to resolve mutual exclusivity by disallowing the filing of competing applications against applications so amended. The public benefit of old Section 22.23(g) was in avoiding the costs and delays associated with conducting comparative hearings. As we will rarely conduct hearings under the modified procedures, we do not need this provision. We incorporated the other provisions of old Section 22.918(c) as new paragraph (d).

§ 22.951 Minimum coverage requirement.

This section replaces old Section 22.924(a)(1) and the introductory text of old Section 22.902(b)(4)(B). We add the provision of the latter reference, as it was omitted from the proposed rule.

§ 22.953 Content and form of applications.

This section replaces old Section 22.924(b) and (c), which set forth the requirements for applications for authority to operate new unserved area systems. Several of the required items for *new* system applications, such as the certification page and most of the exhibits, are unnecessary to process applications for authority to operate *modified* systems. Previously, we have not had a rule listing the requirements for applications to operate modified systems. For the sake of completeness and to avoid confusion, we add a paragraph (b) which lists the items from paragraph (a) that are needed for modified system applications, and provides that the rest of the items in paragraph (a) may be omitted from applications to operate modified systems.

§ 22.955 Canadian condition.

This new section sets forth the text of the license condition required by international agreement for cellular systems having transmitting facilities located within 72 kilometers (45 miles) of the U.S.-Canadian border. We adopt it as proposed.

§ 22.957 Mexican condition.

This new section sets forth the text of the license condition required by international agreement for cellular systems having transmitting facilities located within 72 kilometers (45 miles) of the U.S.-Mexican border. We adopt it as proposed.

§ 22.959 Rules governing processing of applications for new systems.

This new section allows us to remove various old rule sections that were relevant only to the processing of the initial MSA and RSA applications. The majority of these applications have been processed.

Subpart I - Offshore Radiotelephone Service

§ 22.1001 Scope.

This section states how the rules in this subpart are applied. We adopt it as proposed.

§ 22.1003 Eligibility.

This section replaces old Section 22.1000. We removed the redundant word "licenses".

§ 22.1005 Priority of service.

This section replaces old Section 22.1008. We adopt it as proposed.

§ 22.1007 Channels for offshore radiotelephone systems.

This section replaces most of old Section 22.1001. We adopt it as proposed.

§ 22.1009 Transmitter locations.

This section contains the transmitter location restrictions in old Section 22.1001(d). We adopt it as proposed.

§ 22.1011 Antenna height limitations.

This section contains the antenna height limitations in old Section 22.1001(d)(5). We adopt it as proposed.

§ 22.1013 Effective radiated power limitations.

This section contains the effective radiated power limitations in old Sections 22.1001(d) and 22.1002. We adopt it as proposed.

§ 22.1015 Repeater operation.

This section combines and clarifies the provisions of old Sections 22.1001(d)(7) and 22.1005(c). We adopt it as

proposed.

§ 22.1025 Permissible communications.

This section replaces paragraphs (a) and (b) of old Section 22.1005. We adopt it as proposed.

§ 22.1031 Temporary fixed stations.

This section replaces old Section 22.1006. We adopt it as proposed.

§ 22.1035 Construction period.

This section contains the construction period provided in old Section 22.43(a)(2). We adopt it as proposed.

§ 22.1037 Application requirements for offshore stations.

This section replaces old Section 22.1001(e). We adopt it as proposed.

Application Forms

We proposed to redesign our application and notification forms to a modular format. Since the release of the NPRM in this proceeding, we have proposed to consolidate existing FCC Forms 401 and 574 into a common form for all mobile and certain fixed services. In the *Further Notice of Proposed Rule Making* in GN Docket No. 93-252, we proposed this common form, and we will make the determination regarding consolidation of forms in that proceeding. We have, however, revised FCC Forms 489 and 490, which we use for notifications and assignments and transfer of control, to follow the modular format that we hope will ease transition to electronic and magnetic filing methods.

APPENDIX B

Final Rules

PART 1 - PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. § 154, 303.

2. Section 1.420 is amended by revising the heading and paragraphs (a) and (b) to read as follows:

§ 1.420 Additional procedures in proceedings for amendment of the FM or TV Tables of Allotments.

(a) Comments filed in proceedings for amendment of the FM Table of Allotments (§ 73.202 of this chapter) or the Television Table of Allotments (§ 73.606 of this chapter) which are initiated on a petition for rule making shall be served on petitioner by the person who files the comments.

(b) Reply comments filed in proceedings for amendment of the FM or Television Tables of Allotments shall be served on the person(s) who filed the comments to which the reply is directed.

* * * * *

3. In the first sentence of the introductory text of Section 1.742, the phrase "Except as specified in § 22.6" is removed and "Except as specified in Part 22" is added in its place.

4. Section 1.743 is amended by revising paragraph (a) and adding new paragraph (e) to read as follows:

§ 1.743 Who may sign applications.

(a) Except as provided in paragraph (b) of this section, applications, amendments thereto, and related statements of fact required by the Commission must be signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer or duly authorized employee, if the applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association. Applications, amendments, and related statements of fact filed on behalf of eligible government entities such as states and territories of the United States, their political subdivisions, the District of Columbia, and units of local government, including incorporated municipalities, must be signed by a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction.

* * * * *

(e) "Signed," as used in this section, means an original hand-written signature, except that by public notice in the Federal Register the Common Carrier Bureau may allow signature by any symbol executed or adopted by the applicant with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.

5. Section 1.821 is revised to read as follows:

§ 1.821 Scope.

The provisions of Sections 1.822, 1.823, 1.824 and 1.825 apply as indicated to those applications for permits, licenses or authorizations in the Public Mobile Services, Multichannel Multipoint Distribution Service and Digital Electronic Message Service for which action may be taken by the Chief, Common Carrier Bureau pursuant to delegated authority.

6. Section 1.823 is amended by revising the heading, paragraph (b)(1) and the headings of paragraphs (b)(2) and (b)(3) to read as follows:

§ 1.823 Random selection procedures for the Public Mobile services.

* * * * *

(b) * * *

(1) Public Mobile Services other than the Cellular Radiotelephone Service. Petitions to Deny and other pleadings may be filed against applications but are not reviewed prior to the random selection process. Petitions filed against tentative selectee applications are reviewed after the tentative selectee is announced.

(2) Cellular Radiotelephone Service, except unserved areas. * * *

(3) Cellular Radiotelephone Service, unserved areas. * * *

* * * * *

7. Section 1.1105 is amended by revising the table entries from 2. to 5.n. to read as follows:

Action	FCC Form No.	Fee amount	Fee Type Code	Address
* * * * *				
2. Domestic Public Land Mobile Stations [Paging and Radiotelephone Service, Air-ground Radiotelephone Service]:				
a. Application for new or additional facility (per transmitter).	FCC 401 & FCC 159	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
b. Application for major modification of an existing facility (per transmitter).	FCC 401 & FCC 159	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
c. Notification of additional transmitter (per transmitter).	FCC 489 & FCC 159	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
d. Major amendment of a pending application (per transmitter).	FCC 401 & FCC 159	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
e. Application for assignment of authorization or consent to transfer of control.				
(i) First call sign	FCC 490	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Each additional call sign	same as 2e(i)	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
f. Application for partial assignment of authorization (per call sign).	FCC 401 & FCC 159 & FCC 490	265.00	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
g. Application for renewal (per call sign).	FCC 405 & FCC 159	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.

Action	FCC Form No.	Fee amount	Fee Type Code	Address
h. Minor modification (per transmitter).				
(i) Notification of minor modification	FCC 489 & FCC 159	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Application for minor modification	FCC 401 & FCC 159	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
i. Request for special temporary authority (per channel/per location).	written request & FCC 159	230.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
j. Application for extension of construction period (per authorization).	FCC 401 & FCC 159	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
k. Notification of commencement of service to subscribers (per notification).	FCC 489 & FCC 159	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
l. Application for new or modified auxiliary test transmitter (per transmitter).	FCC 401 & FCC 159	230.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
m. Application for authority to provide commercial mobile service using broadcast station subcarriers (per application).	FCC 401 & FCC 159	115.00	CFD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
n. Application for reinstatement [NO LONGER AVAILABLE].				
o. Application to combine separate authorizations (per call sign).	FCC 401 & FCC 159	230.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
p. Application for new or modified standby transmitter (per transmitter/per location).	FCC 401 & FCC 159	230.00	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
q. 931 MHz nationwide paging renewal [SEE 2g].				
r. Application for new, modified or renewal general aviation air-ground mobile license (per application).	FCC 409	45.00	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
s. Application for 932-932.5 / 941-941.5 MHz point-to-multipoint channels (per transmitter.	FCC 401 & FCC 159	265.00	CMP	Federal Communications Commission, 932/941 MHz Point-to-Multipoint Channels, Common Carrier Bureau, P.O. Box 358924, Pittsburgh, PA 15261-5924.
3. Cellular Systems [Cellular Radiotelephone Service]:				
a. Initial application for new cellular system.	FCC 401 & FCC 159	265.00	CMC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
b. Application for major modification.	FCC 401 & FCC 159	265.00	CMC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
c. Minor modifications.				
(i) Application for minor modification	FCC 401 & FCC 159	70.00	CDC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.

Action	FCC Form No.	Fee amount	Fee Type Code	Address
(ii) Notification of minor modification or commencement of service to subscribers (per notification).	FCC 489 & FCC 159	70.00	CDC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
d. Application for full or partial assignment of authorization or consent to transfer of control.	FCC 490	265.00	CMC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
e. Application for renewal.	FCC 405 & FCC 159	45.00	CAC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
f. Application for extension of construction period.	FCC 401 & FCC 159	45.00	CAC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
g. Request for special temporary authority.	written request & FCC 159	230.00	CLC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
h. Request to combine cellular geographic service areas (per system).	written request & FCC 159	60.00	CBC	Federal Communications Commission, Cellular Systems, P.O. Box 358135, Pittsburgh, PA 15251-5135.
4. Rural Radio [Rural Radiotelephone Service]:				
a. Application for new or additional facility (per transmitter).	FCC 401 & FCC 159	125.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
b. Application for major modification of an existing facility (per transmitter).	FCC 401 & FCC 159	125.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
c. Major amendment of a pending application (per transmitter).	FCC 401 & FCC 159	125.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
d. Minor modifications.				
(i) Notification of minor modification (per transmitter).	FCC 489 & FCC 159	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Application for minor modification (per transmitter).	FCC 401 & FCC 159	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
e. Application for assignment of authorization or consent to transfer of control.				
(i) First call sign:	FCC 490	125.00	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Each additional call sign:	same as 4e(i)	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(iii) Partial assignment of authorization (per call sign):	FCC 490 & FCC 401 & FCC 159	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
f. Application for renewal (per call sign).	FCC 405 & FCC 159	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.

Action	FCC Form No.	Fee amount	Fee Type Code	Address
g. Application for extension of construction period (per application).	FCC 401 & FCC 159	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
h. Notification of commencement of service to subscribers (per notification).	FCC 489 & FCC 159	45.00	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
i. Request for special temporary authority (per channel/per location)	written request & FCC 159	230.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
j. Application for reinstatement [NO LONGER AVAILABLE].				
k. Application to combine separate authorizations (per call sign).	FCC 401 & FCC 159	230.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
l. Application for new or modified auxiliary test transmitter (per transmitter).	FCC 401 & FCC 159	230.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
m. Application for new or modified standby transmitter (per transmitter).	FCC 401 & FCC 159	230.00	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
5. Offshore Radiotelephone Service:				
a. Application for new or additional facility (per transmitter).	FCC 401 & FCC 159	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
b. Application for major modification of an existing facility (per transmitter).	FCC 401 & FCC 159	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
c. Fill-in transmitters [NOT AVAILABLE]				
d. Major amendment of a pending application (per transmitter).	FCC 401 & FCC 159	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
e. Minor modifications.				
(i) Notification of minor modification (per transmitter).	FCC 489 & FCC 159	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Application for minor modification (per transmitter).	FCC 401 & FCC 159	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
f. Application for assignment of authorization or consent to transfer of control.				
(i) First call sign:	FCC 490	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(ii) Each additional call sign:	same as 5f(i)	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
(iii) Partial assignment of authorization (per call sign):	FCC 490 & FCC 401 & FCC 159	125.00	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.

Action	FCC Form No.	Fee amount	Fee Type Code	Address
g. Application for renewal (per call sign).	FCC 405 & FCC 159	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
h. Application for extension of construction period (per application).	FCC 401 & FCC 159	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
i. Application for reinstatement [NO LONGER AVAILABLE]				
j Notification of commencement of service to subscribers (per notification).	FCC 489 & FCC 159	45.00	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
k. Request for special temporary authority (per channel/per location).	written request & FCC 159	230.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
l. Application to combine separate authorizations (per call sign).	FCC 401 & FCC 159	230.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
m. Application for new or modified auxiliary test transmitter (per transmitter).	FCC 401 & FCC 159	230.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
n. Application for new or modified standby transmitter (per transmitter).	FCC 401 & FCC 159	230.00	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251-5130.
* * * * *				

8. Part 22 is revised to read as follows:

PART 22 - PUBLIC MOBILE SERVICES

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AUTHORITY: 47 U.S.C. §§ 154, 303, unless otherwise noted.

Subpart A - Scope and Authority

§ 22.1 Basis and purpose.

This section contains a concise general statement of the basis and purpose of the rules in this part, pursuant to 5 U.S.C. § 553(c).

(a) Basis. These rules are issued pursuant to the Communications Act of 1934, as amended, 47 U.S.C. § 151 et. seq.

(b) Purpose. The purpose of these rules is to establish the requirements and conditions under which domestic common carrier radio stations may be licensed and used in the Public Mobile Services.

§ 22.3 Authorization required.

Stations in the Public Mobile Services must be used and operated only in accordance with the rules in this part and with a valid authorization granted by the FCC under the provisions of this part.

(a) The holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization. Authorizations may be granted upon proper application, provided that the FCC finds that the applicant is

qualified in regard to citizenship, character, financial, technical and other criteria, and that the public interest, convenience and necessity will be served. See 47 U.S.C. §§ 301, 308, and 309.

(b) Authority for subscribers to operate mobile or fixed stations in the Public Mobile Services, except for certain stations in the Rural Radiotelephone Service and the Air-ground Radiotelephone Service, is included in the authorization held by the common carrier providing service to them. Subscribers are not required to apply for, and the FCC does not accept applications from subscribers for, individual mobile or fixed station authorizations in the Public Mobile Services, except as follows:

(1) Individual authorizations are required to operate general aviation airborne mobile stations in the Air-Ground Radiotelephone Service. See § 22.821.

(2) Individual authorizations are required to operate rural subscriber stations in the Rural Radiotelephone Service, except as provided in § 22.703.

§ 22.5 Citizenship.

The rules in this section implement Section 310 of the Communications Act of 1934, as amended (47 U.S.C. § 310), in regard to the citizenship of licensees in the Public Mobile Services.

(a) Foreign governments. The FCC will not grant an authorization in the Public Mobile Services to any foreign government or any representative thereof.

(b) Alien ownership or control. The FCC will not grant an authorization in the Public Mobile Services to:

(1) Any alien or the representative of any alien;

(2) Any corporation organized under the laws of any foreign government;

(3) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

(4) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the FCC finds that the public interest will be served by the refusal or revocation of such license.

§ 22.7 General eligibility.

Except as otherwise provided in this part, existing and proposed common carriers are eligible to hold authorizations in the Public Mobile Services. Applications are granted only if the applicant is legally, financially, technically and otherwise qualified to render the proposed service.

§ 22.99 Definitions.

Terms used in this part have the following meanings:

Air-Ground Radiotelephone Service. A radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

Airborne station. A mobile station in the Air-ground Radiotelephone Service authorized for use on aircraft while in flight or on the ground.

Antenna structure. A structure comprising an antenna, the tower or other structure that exists solely to support antennas, and any surmounting appurtenances (attachments such as beacons or lightning rods).

Antenna. A device that converts radio frequency electrical energy to radiated electromagnetic energy and vice versa; in a transmitting station, the device from which radio waves are emitted.

Archival quality microfiche. A silver halide master microfiche or a copy made on silver halide film.

Assignment of authorization. A transfer of a Public Mobile Services authorization from one party to another, voluntarily or involuntarily, directly or indirectly, or by transfer of control of the licensee.

Authorization. A written instrument or oral statement issued by the FCC conveying authority to operate, for a specified term, a station in the Public Mobile Services.

Authorized bandwidth. The necessary or occupied bandwidth of an emission, whichever is more.

Authorized spectrum. The spectral width of that portion of the electromagnetic spectrum within which the emission power of the authorized transmitter(s) must be contained, in accordance with the rules in this part. The authorized spectrum comprises one channel bandwidth or the bandwidths of two or more contiguous channels.

Auxiliary test transmitter. A fixed transmitter used to test Public Mobile systems.

Base transmitter. A stationary transmitter that provides radio telecommunications service to mobile and/or fixed receivers,

including those associated with mobile stations.

Blanketing interference. Disturbance in consumer receivers located in the immediate vicinity of a transmitter, caused by currents directly induced into the consumer receiver's circuitry by the relatively high field strength of the transmitter.

Build-out transmitters. In the Cellular Radiotelephone Service, transmitters added to the first cellular system authorized on a channel block in a cellular market during the five year build-out period in order to expand the coverage of the system within the market.

Cardinal radials. Eight imaginary straight lines extending radially on the ground from an antenna location in the following azimuths with respect to true North: 0°, 45°, 90°, 135°, 180°, 225°, 270°, 315°.

Carrier frequency. The frequency of the unmodulated electrical wave at the output of an amplitude modulated (AM), frequency modulated (FM) or phase modulated (PM) transmitter.

Cell. The service area of an individual transmitter location in a cellular system.

Cellular Geographic Service Area. The geographic area served by a cellular system, within which that system is entitled to protection and adverse effects are recognized, for the purpose of determining whether a petitioner has standing. See § 22.911.

Cellular markets. Standard geographic areas used by the FCC for administrative convenience in the licensing of cellular systems. See § 22.909.

Cellular Radiotelephone Service. A radio service in which common carriers are authorized to offer and provide cellular service for hire to the general public. This service was formerly titled Domestic Public Cellular Radio Telecommunications Service.

Cellular repeater. In the Cellular Radiotelephone Service, a stationary transmitter or device that automatically re-radiates the transmissions of base transmitters at a particular cell site and mobile stations communicating with those base transmitters, with or without channel translation.

Cellular service. Radio telecommunication services provided using a cellular system.

Cellular system. An automated high-capacity system of one or more multichannel base stations designed to provide radio telecommunication services to mobile stations over a wide area in a spectrally efficient manner. Cellular systems employ techniques such as low transmitting power and automatic hand-off between base stations of communications in progress to enable channels to be reused at relatively short distances. Cellular systems may also employ digital techniques such as voice encoding and decoding, data compression, error correction, and time or code division multiple access in order to increase system capacity.

Center frequency. The frequency of the middle of the bandwidth of a channel.

Central office transmitter. A fixed transmitter in the Rural Radiotelephone Service that provides service to rural subscriber stations.

CGSA. See Cellular Geographic Service Area.

Channel. The portion of the electromagnetic spectrum assigned by the FCC for one emission. In certain circumstances, however, more than one emission may be transmitted on a channel. See, for example, § 22.161.

Channel bandwidth. The spectral width of a channel, as specified in this part, within which 99% of the emission power must be contained.

Channel block. A group of channels that are assigned together, not individually.

Channel pair. Two channels that are assigned together, not individually. In this part, channel pairs are indicated by an ellipsis between the center frequencies.

Communications channel. In the Cellular Radiotelephone and Air-ground Radiotelephone Services, a channel used to carry subscriber communications.

Construction period. The period between the date of grant of an authorization and the date of required commencement of service.

Control channel. In the Cellular Radiotelephone Service and the Air-ground Radiotelephone Service, a channel used to transmit information necessary to establish or maintain communications. In the other Public Mobile Services, a channel that may be assigned to a control transmitter.

Control point. A location where the operation of a public mobile station is supervised and controlled by the licensee of that station.

Control transmitter. A fixed transmitter in the Public Mobile Services that transmits control signals to one or more base or fixed stations for the purpose of controlling the operation of the base or fixed stations, and/or transmits subscriber communications to one or more base or fixed stations that retransmit them to subscribers.

Dead spots. Small areas within a service area where the field strength is lower than the minimum level for reliable service.

Service within dead spots is presumed.

Dispatch service. A radiotelephone service comprising communications between a dispatcher and one or more mobile units. These communications normally do not exceed one minute in duration and are transmitted directly through a base station, without passing through mobile telephone switching facilities.

Effective radiated power (ERP). The effective radiated power of a transmitter (with antenna, transmission line, duplexers etc.) is the power that would be necessary at the input terminals of a reference half-wave dipole antenna in order to produce the same maximum field intensity. ERP is usually calculated by multiplying the measured transmitter output power by the specified antenna system gain, relative to a half-wave dipole, in the direction of interest.

Emission. The electromagnetic energy radiated from an antenna.

Emission designator. An internationally accepted symbol for describing an emission in terms of its bandwidth and the characteristics of its modulation, if any. See § 2.201 of this chapter for details.

Emission mask. The design limits imposed, as a condition for type acceptance, on the mean power of emissions as a function of frequency both within the authorized bandwidth and in the adjacent spectrum.

Equivalent isotropically radiated power (EIRP). The equivalent isotropically radiated power of a transmitter (with antenna, transmission line, duplexers etc.) is the power that would be necessary at the input terminals of a reference isotropic radiator in order to produce the same maximum field intensity. An isotropic radiator is a theoretical lossless point source of radiation with unity gain in all directions. EIRP is usually calculated by multiplying the measured transmitter output power by the specified antenna system gain, relative to an isotropic radiator, in the direction of interest.

Extension. In the Cellular Radiotelephone Service, an area within the service area boundary of a cellular system, but outside of the market boundary. See §§ 22.911(c) and 22.912.

Facsimile service. Transmission of still images from one place to another by means of radio.

Fill-in transmitters. Transmitters added to a station, in the same area and transmitting on the same channel or channel block as previously authorized transmitters, that do not expand the existing service area, but are established for the purpose of improving reception in dead spots.

Five year build-out period. A five year period during which the licensee of the first cellular system authorized on each channel block in each cellular market may expand the system within that market. See § 22.947.

Fixed transmitter. A stationary transmitter that communicates with other stationary transmitters.

Frequency. The number of cycles occurring per second of an electrical or electromagnetic wave; a number representing a specific point in the electromagnetic spectrum.

Ground station. In the Air-ground Radiotelephone Service, a stationary transmitter that provides service to airborne mobile stations.

Height above average terrain (HAAT). The height of an antenna above the average elevation of the surrounding area.

In-building radiation systems. Supplementary systems comprising low power transmitters, receivers, indoor antennas and/or leaky coaxial cable radiators, designed to improve service reliability inside buildings or structures located within the service areas of stations in the Public Mobile Services.

Initial cellular applications. Applications for authority to construct and operate a new cellular system, excluding applications for interim operating authority.

Interfering contour. The locus of points surrounding a transmitter where the predicted median field strength of the signal from that transmitter is the maximum field strength that is not considered to cause interference at the service contour of another transmitter.

Interoffice transmitter. A fixed transmitter in the Rural Radiotelephone Service that communicates with other interoffice transmitters for the purpose of interconnecting rural central offices.

Meteor burst propagation mode. A long distance VHF radio communication path occurring as a result of the refraction of electromagnetic waves by ionized meteor trails.

Mobile station. One or more transmitters that are capable of operation while in motion.

Necessary bandwidth. The calculated spectral width of an emission. Calculations are made using procedures set forth in Part 2 of this chapter. The bandwidth so calculated is considered to be the minimum necessary to convey information at the desired rate with the desired accuracy.

Occupied bandwidth. The measured spectral width of an emission. The measurement determines occupied bandwidth as the difference between upper and lower frequencies where 0.5% of the emission power is above the upper frequency and 0.5% of the emission power is below the lower frequency.

Offshore central transmitter. A fixed transmitter in the Offshore Radiotelephone Service that provides service to offshore subscriber stations.

Offshore Radiotelephone Service. A radio service in which common carriers are authorized to offer and provide radio telecommunication services for hire to subscribers on structures in the offshore coastal waters of the Gulf of Mexico.

Offshore subscriber station. One or more fixed and/or mobile transmitters in the Offshore Radiotelephone Service that receive service from offshore central transmitters.

Pager. A small radio receiver designed to be carried by a person and to give an aural, visual or tactile indication when activated by the reception of a radio signal containing its specific code. It may also reproduce sounds and/or display messages that were also transmitted. Some pagers also transmit a radio signal acknowledging that a message has been received.

Paging and Radiotelephone Service. A radio service in which common carriers are authorized to offer and provide paging and radiotelephone service for hire to the general public. This service was formerly titled Public Land Mobile Service.

Paging service. Transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

Partitioned cellular market. A cellular market with two or more authorized cellular systems on the same channel block during the five year build-out period, as a result of settlements during initial licensing or contract(s) between the licensee of the first cellular system and the licensee(s) of the subsequent systems. See § 22.947(b).

Public Mobile Services. Radio services in which common carriers are authorized to offer and provide mobile and related fixed radio telecommunication services for hire to the public.

Radio common carrier. A telecommunications common carrier that provides radio communications services but is not engaged in the business of providing landline local exchange telephone service.

Radio telecommunication services. Communication services provided by the use of radio, including radiotelephone, radiotelegraph, paging and facsimile service.

Radiotelegraph service. Transmission of messages from one place to another by means of radio.

Radiotelephone service. Transmission of sound from one place to another by means of radio.

Repeater. A fixed transmitter that retransmits the signals of other stations.

Roamer. A mobile station receiving service from a station or system in the Public Mobile Services other than one to which it is a subscriber.

Rural Radiotelephone Service. A radio service in which common carriers are authorized to offer and provide radio telecommunication services for hire to subscribers in areas where it is not feasible to provide communication services by wire or other means.

Rural subscriber station. One or more fixed transmitters in the Rural Radiotelephone Service that receive service from central office transmitters.

Service area. The geographic area considered by the FCC to be reliably served by a station in the Public Mobile Services.

Service contour. The locus of points surrounding a transmitter where the predicted median field strength of the signal from that transmitter is the minimum field strength that is considered sufficient to provide reliable service to mobile stations.

Service to subscribers. Service to at least one subscriber that is not affiliated with, controlled by or related to the providing carrier.

Station. A station equipped to engage in radio communication or radio transmission of energy [47 U.S.C. 153(k)].

Telecommunications common carrier. An individual, partnership, association, joint-stock company, trust or corporation engaged in rendering radio telecommunications services to the general public for hire.

Temporary fixed station. One or more fixed transmitters that normally do not remain at any particular location for longer than 6 months.

Transfer of control. A transfer of the controlling interest in a Public Mobile Services licensee from one party to another.

Unserved areas. In the Cellular Radiotelephone Service, areas outside of all existing CGSAs (on either of the channel blocks), to which the Communications Act of 1934, as amended, is applicable.

Wireline common carrier. A telecommunications common carrier that is also engaged in the business of providing landline local exchange telephone service.

Subpart B - Application Requirements and Procedures

§ 22.101 Station files.

Applications, notifications, correspondence and other

Table B-1 - Standard Forms for the Public Mobile Services

Purpose of Filing	Form Number	Title of Form
• application for new or modified station • major amendment to pending application • application for partial assignment of authorization	401	Application for Mobile Radio Service Authorization
• application for renewal of authorization	405	Application for Renewal of Station License
• application for airborne mobile authorization	409	Application for Airborne Mobile Radiotelephone Authorization
• application for assignment of authorization	430	Licensee Qualification Report
• notification of completion of construction • notification of minor modification of station	489	Notification of Commencement of Service or of Additional or Modified Facilities
• application for assignment of authorization • application for consent to transfer of control	490	Application for Assignment of Authorization or Consent to Transfer of Control of Licensee

material, and copies of authorizations, comprising technical, legal, and administrative data relating to each station in the Public Mobile Services are maintained by the FCC in individual station files. These files constitute the official records for these stations and supersede any other records, data bases or lists from the FCC or other sources.

§ 22.103 Representations.

Applicants must make full and continuing disclosure as required by § 1.65 of this chapter. Applicants must not make misrepresentations. The signing of an application or notification for new or additional facilities in the Public Mobile Services constitutes a representation that the applicant intends to use such facilities to provide service to subscribers in accordance with the rules in this part.

§ 22.105 Written applications, standard forms, microfiche, magnetic disks.

Except for authorizations granted under the emergency conditions set forth in § 308 of the Communications Act of 1934, as amended (47 U.S.C. 308), the FCC may grant authorizations only upon written application (FCC Form 401) received by it. A separate written application is required for each authorization. Applicants shall submit any documents, exhibits, or other written statements of fact that the FCC may require in determining whether to grant, deny or dismiss an application.

(a) Formal applications, amendments and notifications. Except as provided in paragraph (b) of this section, applications, amendments and notifications must be filed using the standard forms listed in paragraph (c) of this section.

(b) Informal applications, amendments and notifications. Applications, amendments and notifications in letter or document form may be accepted for filing, if none of the standard forms listed in this section are prescribed for or clearly applicable for the intended purpose. Such informal applications, amendments and notifications must be submitted in duplicate, with a caption clearly stating the name of the filer, nature of the filing, the Public Mobile service involved, the call sign of the relevant existing station, if any, and the file number of the relevant pending application, if any, and must contain all necessary technical data and exhibits.

(c) Standard forms. Standard forms may be obtained in small quantities from the FCC. Standard forms may be reproduced and the copies used. Computer-generated standard forms may also be used after approval by the FCC staff. Standard forms used for applications, amendments, notifications and reports in the Public Mobile Services are listed in Table B-1.

(d) Microfiche required. All filings and submissions related to stations in the Public Mobile Services, including applications (including exhibits and attachments), notifications, amendments, reports, correspondence and pleadings must be submitted in microfiche form, except as provided in paragraphs (d)(1) and (g) of this section.

(1) Emergency filings, such as requests for special temporary authority, need not be submitted in microfiche form. Filings and submissions (other than standard application forms) that are no longer than three pages need not be submitted in microfiche form. Standard application forms must be submitted in microfiche form, even if they comprise three pages or less.

(2) Three microfiche copies of each filing or submission must be submitted, except that, for initial Phase I unserved area applications in the Cellular Radiotelephone Service (see § 22.949), two microfiche copies must be submitted. Each microfiche copy must be a complete copy of the signed paper original. Each microfiche must be a 148mm by 105mm negative (clear transparent characters appearing on a background providing sufficient contrast to make legible copies) at 24× or 27× reduction. At least one of the microfiche copies must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. Microfiche must be placed in paper microfiche envelopes and submitted in a 5" by 7½" envelope. Applicants must leave Row "A" (the first row for page images) of the first microfiche blank for FCC use.

(3) The following information must be printed on the mailing envelope, the microfiche envelope, and the title area at the top of the microfiche:

(i) For notifications, amendments, reports, correspondence, pleadings and applications, other than initial applications in the Cellular Radiotelephone Service - the name of the applicant, the city and state of the application and the call sign of the station, if the application refers to an existing station.

(ii) For initial applications in the Cellular Radiotelephone Service - the name of the applicant, the market name, the market number, and the channel block.

(4) The microfiche copies of opposition and reply pleadings may be submitted after the required paper originals, in accordance with § 1.45 of this chapter.

(e) Paper original required. The paper originals of notifications, amendments, reports, correspondence and applications, other than initial Phase I unserved area applications in the Cellular Radiotelephone Service, must be submitted at the same time as the microfiche required by paragraph (d) of this section. The paper originals of initial Phase I unserved area applications selected in random selection processes must be submitted 7 days after the release of the public notice announcing the tentative selectee. The paper originals of opposition and reply pleadings must be submitted within the time frames established by § 1.45 of this chapter. Each paper original must be stamped "ORIGINAL" on the top page. In addition to the paper original, paper copies of pleadings must be submitted as required by § 1.51 of this chapter.

(f) Correspondence. Correspondence concerning a submitted application must clearly identify the name of the filer, nature of the filing, the Public Mobile service involved, the call sign of the relevant existing station, if any, and the file number (if assigned) of the relevant pending application. Correspondence may be sent directly to Mobile Services Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554.

(g) Magnetic disks. To assist the FCC in maintaining an accurate technical licensing database, applicants are encouraged to submit the technical and administrative data contained in applications and notifications on magnetic disks. Applicants may also submit, in lieu of the microfiche required by paragraph (d) of this section, entire applications and notifications on magnetic disks, by including graphics files containing the images of the signed paper originals.

(1) Each application must be submitted on a separate labeled standard 3½" magnetic disk, formatted to be readable by high-density floppy drives operating under MS-DOS (3.X or later compatible versions). A copy of each disk must also be submitted (2 identical disks per application).

(2) [Reserved]

NOTE: Paragraph (g) of § 22.105 is not effective until further notice.

§ 22.106 Filing fees; place.

Applications, amendments, notifications and other filings must be submitted to the FCC at the appropriate address, with the appropriate filing fee. The fee amounts and addresses are listed in Part 1, Subpart G of this chapter (§ 1.1105 in particular), and in the publication "Common Carrier Services Fee Filing Guide" which is available from the Federal Communications Commission, Washington, DC 20554.

§ 22.107 General application requirements.

In general, applications for authorizations, assignments of authorizations, or consent to transfer of control of licensees in the Public Mobile Services must:

(a) Demonstrate the applicant's qualifications to hold an authorization in the Public Mobile services;

(b) State how a grant would serve the public interest, convenience, and necessity;

(c) Contain all information required by FCC rules or application forms;

(d) Propose operation of a facility in compliance with all rules governing the Public Mobile service;

(e) Be amended as necessary to remain substantially accurate and complete in all significant respects, in accordance with the provisions of § 1.65 of this chapter; and,

(f) Be signed in accordance with § 1.743 of this chapter.

§ 22.108 Parties to applications.

Each application for an authorization, assignment of

authorization, or for consent to transfer of control in the Public Mobile Services must disclose fully the real party or parties in interest to the application. Such disclosure must include:

(a) A list of the applicant's subsidiaries, if any. For the purposes of this section, a subsidiary is any business for which the applicant or any officer, director, stockholder or key manager of the applicant owns 5% or more of the stock, warrants, options or debt securities. This list must include a description of each subsidiary's principal business and relationship to the applicant.

(b) A list of the applicant's affiliates, if any. For the purposes of this section, an affiliate is:

(1) Any business that holds a 5% or more interest in the applicant; or,

(2) Any business in which a 5% or more interest is held by a business that also holds a 5% or more interest in the applicant.

(c) A list of the names, addresses, citizenship and principal business of any person holding 5% or more of each class of stock, warrants, options or debt securities of the applicant, indicating the amount and percentage held, and providing the name, address, citizenship and principal place of business of any person, if other than the holder, for whose benefit such interest is held. If any such persons are related by blood or marriage, the relationship must be disclosed.

(d) For initial cellular applications, the name and address of each partner, his or her citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application. See § 22.953(a)(5)(v).

§ 22.115 Content of applications.

Applications must contain all applicable information requested on the standard form and any additional information required by the rules in this part.

(a) The following requirements are common to all Public Mobile Services:

(1) Site availability. At the time of filing, applicants must have obtained reasonable assurance that all antenna sites specified in their applications are available for the proposed use.

(2) Antenna structure drawing. Applications proposing a new antenna structure or a change in the overall height of an existing antenna structure must contain a vertical profile drawing of the antenna structure. (Applications proposing to use an existing structure, without changing the overall height of the structure, need not contain a drawing.) If appropriate, the standard drawings on Schedule F of FCC Form 401 should be used to satisfy this requirement. Otherwise, the applicant may submit an exhibit containing the required drawing. The drawing must be labeled to show the overall structure height including appurtenances, the height of the tip(s) of the proposed antenna(s), the height of any supporting building (or other man-made structure other than an antenna tower), and the ground elevation. Heights must be given in meters above ground level (AGL) and meters above mean sea level (AMSL). The ground elevation must be given in meters AMSL.

(3) FAA notification. Before construction of new antenna structures or increases in the height of existing structures is authorized by the FCC, a Federal Aviation Administration (FAA) determination of No Hazard to Air Navigation may be required. To apply for this determination, applicants must notify the FAA of the planned construction. Criteria used to determine whether FAA notification is required for a particular antenna structure are contained in Part 17, Subpart B of this chapter. Applications proposing a new antenna structure or an increase in the height of an existing antenna structure must state whether FAA notification is required. If available, a copy of the FAA determination should be included in the application. If FAA notification is required, but the FAA determination is not available at the time the application is filed, the application must include the following information in regard to the FAA notification: the name of the person that submitted the notification, the date the notification was submitted, and the location of the FAA office to which the notification was submitted.

(4) Antenna locations. Applications for stations at fixed locations must describe each transmitting antenna site by its geographical coordinates and also by its street address, or by reference to a nearby landmark. Geographical coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude.

NOTE to paragraph (4) of § 22.115: The FAA has announced that effective October 15, 1992, it will use geographic coordinates based on the 1983 North American Datum (NAD83). Until further notice, however, the FCC will continue to use geographical coordinates based the 1927 North American Datum (NAD27). Applicants may supply geographical coordinates based on NAD83 in addition to those required (NAD27).

(5) Environmental concerns. Each applicant is required to indicate at the time its application is filed whether or not an FCC grant of the application may have a significant environmental effect, as defined by § 1.1307 of this chapter. If answered affirmatively, an Environmental Assessment, required by § 1.1311 of this chapter, must be filed with the application and environmental review by the FCC must be completed prior to construction.

(b) Reference to material on file. Questions on application

forms that call for specific technical data, or that can be answered yes or no or with another short answer, must be answered on the form. Otherwise, if documents, exhibits, or other lengthy showings already on file with the FCC contain information required in an application, the application may incorporate such information by reference, provided that:

(1) The referenced information comprises more than one 8½" × 11" page and is current and accurate in all material respects; and,

(2) The reference states specifically where the referenced information can actually be found, including:

(i) The station call sign or application file number, if the reference is to station files or previously filed applications;

(ii) The title of the proceeding, the docket number, and any legal citations, if the reference is to a docketed proceeding.

(c) Service specific requirements. Applications for authorization in the Cellular Radiotelephone Service must contain specific information as required by § 22.929 and § 22.953. Applications for authorization in the Paging and Radiotelephone Service must contain specific information as required by § 22.529, § 22.559 and § 22.589. Applications for authorization in the Rural Radiotelephone Service must contain the information required by § 22.709. Applications for authorization in the Offshore Radio Service must contain the information required by § 22.1037. Applications for authorization in the Air-Ground Radiotelephone Service must contain specific information as required by § 22.803 and § 22.875, as appropriate.

§ 22.117 Content of notifications.

Notifications must contain all applicable information requested on the standard form and any additional information required by the rules in this part. See §§ 22.124, 22.137, 22.142, 22.163, 22.165, 22.941, and 22.946.

§ 22.119 Requests for rule waivers.

The FCC may waive the requirements of rules in this part on its own motion or upon written request.

(a) Requests for waiver of rules must contain a complete explanation as to why the waiver is desired. The FCC may grant a request for waiver if it is shown that:

(1) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(2) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or that the applicant has no reasonable alternative.

(b) The FCC, in its discretion, may give public notice of the filing of a waiver request and seek comment from the public or affected parties.

(c) Denial of a rule waiver request associated with an application renders that application defective unless it contains an alternative proposal that fully complies with the rules, in which event the application is processed using the alternative proposal as if the waiver had not been requested. Applications rendered defective may be dismissed without prejudice.

§ 22.120 Application processing; initial procedures.

This section contains rules governing the initial processing of applications for authority to operate a station in the Public Mobile Services.

(a) File numbers. Applications received by the FCC are assigned file numbers. Assignment of a file number to an application is for administrative convenience and does not constitute a determination that the application is acceptable for filing. Assignment of a file number does not preclude the subsequent return or dismissal of an application. For administrative efficiency, the FCC, in its discretion, occasionally consolidates separate applications filed simultaneously by the same applicant into a single application (with one file number) and splits applications comprising two or more severable proposals into separate applications (with different file numbers).

(b) Received date. The FCC records the date on which each application is received. This date is used to determine compliance with applicable cut-off dates or filing windows and for other purposes.

(c) Initial review for completeness (prescreening). Each application is reviewed for completeness. The purpose of this initial review is to identify applications that are defective in an obvious way (e.g. not signed, missing pages, improper or missing fee payment). Applications found to be defective in this review are unacceptable for filing and may be returned to the applicant with a brief statement indicating the nature of the defect(s) found. Applications for which no obvious defects are discovered in the initial review are acceptable for filing.

(d) Public notice; acceptance for filing. The FCC periodically issues Public Notices that list applications that are acceptable for filing. The listing of an application on a Public Notice as acceptable for filing provides notice to the public that the application has been filed; it does not preclude dismissal of the application if it is subsequently found to be defective or otherwise subject to dismissal under § 22.128.

§ 22.121 Repetitious, inconsistent or conflicting applications.

Repetitious, inconsistent or conflicting applications are not accepted for filing by the FCC. Unless the FCC in a particular case determines otherwise, such applications are not returned to the applicant.

(a) While an application is pending, any subsequent inconsistent or conflicting application submitted by, on behalf of, or for the benefit of the same applicant, its successor or assignee will not be accepted for filing.

(b) If an applicant has been afforded an opportunity for a hearing with respect to an application for a new station or an enlargement of service area, and the FCC has, after hearing or default, denied the application or dismissed it with prejudice, the FCC will not consider a like application for service of the same type to the same area by that applicant, or by its successor or assignee, or on behalf of or for the benefit of the parties in interest to the original application, until one year after the effective date of the FCC's action on the original application.

(c) If an appeal has been taken from the action of the FCC denying a particular application, a like application for service of the same type to the same area, in whole or in part, filed by that applicant or by its successor or assignee, or on behalf or for the benefit of the parties in interest to the original application, will not be considered until the final disposition of such appeal.

(d) If an authorization is automatically terminated because of failure to commence service to subscribers (see § 22.144), the FCC will not consider an application for another authorization to operate a station on the same channel in the same geographical area by that party, or by its successor or assignee, or on behalf of or for the benefit of the parties in interest to the terminated authorization, until one year after the date the authorization terminated. This paragraph does not apply to authorizations in the Cellular Radiotelephone Service.

§ 22.122 Amendment of applications.

Pending applications may be amended as a matter of right if they have not been designated for hearing or listed in a Public Notice for a random selection or competitive bidding process, except as provided in paragraphs (b) and (c) of this section and in § 22.949.

(a) If a petition to deny or other formal objection has been filed, a copy of any amendment (or other filing) must be served on the petitioner. If the FCC has issued a Public Notice stating that the application appears to be mutually exclusive with another application (or applications), a copy of any amendment (or other filing) must be served on any such mutually exclusive applicant (or applicants).

(b) Amendments to applications that resolve mutual exclusivity may be filed at any time, subject to the requirements of § 22.129.

(c) Amendments to applications designated for hearing may be allowed by the presiding officer and amendments to applications selected in a random selection process may be allowed by the FCC for good cause shown. In such instances, a written petition demonstrating good cause must be submitted and served upon the parties of record.

§ 22.123 Classification of filings as major or minor.

Applications and amendments to applications are classified as major or minor. Categories of major and minor filings are listed in § 309 of the Communications Act of 1934, as amended (47 U.S.C. § 309). In general, a major filing is a request for an FCC action that has the potential to affect parties other than the applicant. Filings are minor if they are not classified as major.

(a) Ownership or control change. Filings are major if they specify a substantial change in beneficial ownership or control (de jure or de facto), unless such change is involuntary or if the filing merely amends an application to reflect a change in ownership or control that has already been approved by the FCC.

(b) Developmental. Applications are major if they request a developmental authorization pursuant to § 22.409, or a regular authorization for facilities operating under a developmental authorization.

(c) Renewal. Applications for renewal of authorizations are major.

(d) Environmental. Filings are major if they request authorization for a facility that would have a significant environmental effect, as defined by §§ 1.1301 through 1.1319 of this chapter.

(e) Paging and Radiotelephone Service. In the Paging and Radiotelephone Service, filings are major if they:

(1) Request an authorization that would establish for the filer a new service area or fixed transmission path on a requested channel;

(2) Request an authorization that would extend the service area of an existing station to include area not served by station(s) authorized to the filer on a requested channel;

(3) Request an authorization that would extend the interfering contours of an existing station beyond the composite interfering contours of station(s) authorized to the filer on a requested channel;

(4) Request an authorization that would increase the effective radiated power or antenna height above average terrain

in any azimuth from an existing fixed transmitter authorized to the filer;

(5) Request an authorization that would relocate an existing fixed transmitter;

(6) Amend a pending application to change a requested channel;

(7) Amend a pending application in a way that would extend the service area of a station on a requested channel to include area that -

(i) Would not have been served by that station as previously proposed in the application and -

(ii) Is not already served by the station on the requested channel;

(8) Amend a pending application in a way that would extend the interfering contours of a station on a requested channel beyond -

(i) The composite interfering contours of that station as previously proposed in the application and -

(ii) The composite interfering contours of any other stations authorized to the filer on a requested channel;

(9) Amend a pending application to increase the proposed effective radiated power or antenna height above average terrain in any azimuth of a fixed transmitter;

(10) Amend a pending application to change the location of a fixed transmitter from that previously proposed in the application; or,

(11) Amend a pending application for which pre-filing coordination was required (see § 22.150) to change the technical proposal substantially from that which was coordinated with other users.

(f) Rural Radiotelephone Service. In the Rural Radiotelephone Service, filings are major if they:

(1) Request an authorization for a new central office or subscriber station;

(2) Request an authorization that would extend the interfering contours of an existing station beyond the composite interfering contours of station(s) authorized to the filer on a requested channel;

(3) Request an authorization that would increase the effective radiated power or antenna height above average terrain in any azimuth from an existing transmitter authorized to the filer;

(4) Request an authorization that would relocate an existing transmitter;

(5) Amend a pending application to change a requested channel;

(6) Amend a pending application in a way that would extend the interfering contours of a station on a requested channel beyond -

(i) The composite interfering contours of that station as previously proposed in the application and -

(ii) The composite interfering contours of any other stations authorized to the filer on a requested channel; or,

(7) Amend a pending application to increase the proposed effective radiated power or antenna height above average terrain in any azimuth of a transmitter.

(g) Cellular Radiotelephone Service. In the Cellular Radiotelephone Service, filings are major if they:

(1) Request an authorization to operate a new cellular system;

(2) Request an authorization for facilities that would expand the cellular geographic service area (CGSA) of an existing cellular system, except during the applicable five year build-out period, if any;

(3) Request an authorization for facilities that would produce a de minimis service area boundary extension (see § 22.911(c)(1));

(4) Request that a CGSA boundary or a portion of a CGSA boundary be determined using an alternative method (see § 22.911(b));

(5) Amend a pending application to change the requested channel block; or,

(6) Amend a pending application by modifying the CGSA of the proposed cellular system to include area that -

(i) Was not included in the CGSA as previously proposed in the application and -

(ii) Is not included in the currently authorized CGSA, if any.

(h) Air-ground Radiotelephone. In the Air-ground Radiotelephone Service, fiiings are major if they:

(1) Request an authorization for a new General Aviation ground station or to relocate an existing General Aviation ground station;

(2) Request the first authorization for a new Commercial Aviation ground station at a location other than those listed in § 22.859;

(3) Request authorization to add a channel to or change a channel of an existing General Aviation ground station; or,

(4) Amend a pending application to change the requested channel or channel block.

(i) Offshore Radiotelephone. In the Offshore Radiotelephone Service, filings are major if they:

(1) Request an authorization for a new offshore central or subscriber station;

(2) Request authorization to add a channel to or change a channel of an existing offshore central or subscriber station; or,

(3) Amend a pending application to change the technical proposal substantially from that which was coordinated with other users prior to filing.

(j) Clerical errors. Amendments are classified as minor if they only correct typographical, transcription or similar clerical errors that are clearly demonstrated (e.g. by reference to other parts of the application) to be mistakes, and whose discovery and correction does not change information previously listed in a Public Notice.

§ 22.124 Notification processing.

This section contains rules governing the processing of notifications (filed on FCC Form 489) in the Public Mobile Services.

(a) File numbers. Notifications received by the FCC are assigned file numbers. Assignment of a file number to a notification is for administrative convenience and does not constitute a determination that the notified action has been examined and not rejected by the FCC. Assignment of a file number does not preclude the return of a notification subsequently found to be defective.

(b) Defective notifications. A notification is defective if:

(1) It is unsigned or incomplete with respect to required answers to questions, informational showings, or other matters of a formal character;

(2) It notifies of an action that does not comply with one or more of the FCC rules;

(3) It notifies of an action for which an application for authorization is required;

(4) It is submitted without the required microfiche; or,

(5) It is untimely filed.

(c) Review. After a file number is assigned, each notification is reviewed. The purpose of this review is to identify notifications that are unacceptable (e.g. not signed, missing pages, improper or missing fee payment). Notifications found to be unacceptable may be returned to the licensee with a brief statement describing the deficiency. If a notification is found to be unacceptable, the FCC may direct the licensee to return the station to compliance with its previous license terms. Acceptable notifications are added to the appropriate station files.

§ 22.125 Application for special temporary authorizations.

In circumstances requiring immediate or temporary use of Public Mobile Services stations, carriers may request special temporary authority (STA) to operate new or modified equipment. Such requests may be submitted as informal applications (see § 22.105) and must contain complete details about the proposed operation and the circumstances that fully justify and necessitate the grant of STA. Such requests should be filed in time to be received by the FCC at least 10 days prior to the date of proposed operation or, where an extension is sought, 10 days prior to the expiration date of the existing STA. Requests received less than 10 days prior to the desired date of operation may be given expedited consideration only if compelling reasons are given, in writing, for the delay in submitting the request. Otherwise, such late-filed requests are considered in turn, but action might not be taken prior to the desired date of operation. Requests for STAs must be accompanied by the proper filing fee.

(a) Grant without Public Notice. STAs may be granted without being listed in a Public Notice, or prior to 30 days after such listing, if:

(1) The STA is to be valid for 30 days or less and the applicant does not plan to file an application for regular authorization of the subject operation;

(2) The STA is to be valid for 60 days or less, pending the filing of an application for regular authorization of the subject operation;

(3) The STA is to allow interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The STA is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(b) Limit on STA term. The FCC may grant STAs valid for a period not to exceed 180 days under the provisions of § 309(f) of the Communications Act of 1934, as amended,

(47 U.S.C. § 309(f)) if extraordinary circumstances so require, and pending the filing of an application for regular operation. The FCC may grant extensions of STAs for a period of 180 days, but the applicant must show that extraordinary circumstances warrant such an extension.

§ 22.127 Public notices.

Periodically, the FCC issues Public Notices listing major filings and other information of public significance. Categories of Public Notice listings are as follows:

(a) Accepted for filing. Acceptance for filing of applications and major amendments thereto.

(b) Actions. FCC actions on pending applications previously listed as accepted for filing.

(c) Informative listings. Information that the FCC, in its discretion, believes to be of public significance. Such listings do not create any rights to file oppositions or other pleadings.

§ 22.128 Dismissal of applications.

The FCC may dismiss any application for authorization, assignment of authorization, or consent to transfer of control in the Public Mobile Services, upon request by the applicant, or if the application is untimely filed, or if the application is mutually exclusive with another application that is selected or granted in accordance with the rules in this part, or for failure to prosecute, or if the requested spectrum is not available, or if the application is found to be defective. Such dismissal may be "without prejudice," meaning that the FCC may accept from the applicant another application for the same purpose at any later time, or "with prejudice," meaning that the FCC will not accept from the applicant another application for the same purpose for a period of one year. Unless otherwise provided in this part, a dismissed application will not be returned to the applicant.

(a) Dismissal at request of applicant. Any applicant may request that its application be returned or dismissed. A request for the return of an application after it has been listed on Public Notice as tentatively accepted for filing is considered to be a request for dismissal of that application without prejudice.

(1) If the applicant requests dismissal of its application with prejudice, the FCC will dismiss that application with prejudice.

(2) If the applicant requests dismissal of its application without prejudice, the FCC will dismiss that application without prejudice, unless:

(i) It has been designated for comparative hearing;

(ii) It has been selected in a random selection process; or,

(iii) It is an application for which the applicant submitted the winning bid in a competitive bidding process.

(3) If the applicant requests dismissal of its application for which it submitted the winning bid in a competitive bidding process, the FCC will dismiss that application with prejudice. If the applicant requests dismissal of its application after that application has been designated for comparative hearing or selected in a random selection process, it may submit a written petition requesting that the dismissal be without prejudice. Such petition must demonstrate good cause and comply with § 22.129 and be served upon all parties of record. The FCC may grant such petition and dismiss the application without prejudice or deny the petition and dismiss the application with prejudice.

(b) Dismissal of mutually exclusive applications not granted. The FCC may dismiss mutually exclusive applications:

(1) For which the applicant did not submit the winning bid in a competitive bidding process;

(2) That are included in a random selection process but are not granted; or,

(3) That receive comparative consideration in a hearing but are not granted by order of the presiding officer.

(c) Dismissal for failure to prosecute. The FCC may dismiss applications for failure of the applicant to prosecute or for failure of the applicant to respond substantially within a specified time period to official correspondence or requests for additional information. Such dismissal will generally be without prejudice if the failure to prosecute or respond occurred prior to designation of the application for comparative hearing or prior to selection of the application in a random selection process, but may be with prejudice in cases of non-compliance with § 22.129. Dismissal will generally be with prejudice if the failure to prosecute or respond occurred after designation of the application for comparative hearing or after selection of the application in a random selection process. The FCC may dismiss applications with prejudice for failure of the applicant to comply with requirements related to a competitive bidding process.

(d) Dismissal as defective. The FCC may dismiss without prejudice applications that it finds to be defective. Applications for authorization or assignment of authorization are defective if:

(1) They are unsigned or incomplete with respect to required answers to questions, informational showings, or other matters of a formal character; or,

(2) They request an authorization that would not comply with one or more of the FCC rules and do not contain a request for waiver of these rule(s), or in the event that the FCC denies such a waiver request, do not contain an alternative proposal that fully complies with the rules;

(e) Dismissal because spectrum not available. The FCC may dismiss applications that request spectrum which is unavailable because:

(1) It is not allocated for assignment in the Public Mobile Services (see Part 2 of this chapter);

(2) It was previously assigned to another licensee on an exclusive basis or cannot be assigned to the applicant without causing interference; or.

(3) Reasonable efforts have been made to coordinate the proposed facility with foreign administrations under applicable international agreements, and an unfavorable response (harmful interference anticipated) has been received.

(f) Dismissal as untimely. The FCC may dismiss without prejudice applications that are prematurely or late filed, including applications filed prior to the opening date or after the closing date of a filing window, or after the cut-off date for a mutually exclusive application filing group.

§ 22.129 Agreements to dismiss applications, amendments or pleadings.

Parties that have filed an application in the Public Mobile Services that is mutually exclusive with one or more other applications, and then enter into an agreement to resolve the mutual exclusivity by withdrawing or requesting dismissal of the application or an amendment thereto, must obtain the approval of the FCC. Parties that have filed or threatened to file a petition to deny, informal objection or other pleading against a pending application in the Public Mobile Services and then seek to withdraw or request dismissal of, or refrain from filing, the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the FCC.

(a) The party withdrawing or requesting dismissal of its application, petition to deny, informal objection or other pleading or refraining from filing a pleading must submit to the FCC a request for approval of the withdrawal or dismissal, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(1) A certification that neither the party nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application, petition to deny, informal objection or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading, or threat to file a pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to bona fide merger agreements;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading or threat to file a pleading.

(b) In addition, within 5 days of the filing date of the applicant's or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application, petition to deny, informal objection or other pleading; and

(2) The terms of any oral agreement relating to the withdrawal or dismissal of the application, petition to deny, informal objection or other pleading.

(c) No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition to deny, informal objection, or any other pleading against an application. For the purposes of this section, reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the FCC.

(d) For the purposes of this section:

(1) Affidavits filed pursuant to this section must be executed by the filing party, if an individual, a partner having personal knowledge of the facts, if a partnership, or an officer having personal knowledge of the facts, if a corporation or association.

(2) Applications, petitions to deny, informal objections and other pleadings are deemed to be pending before the FCC from the time the application or petition to deny is filed with the FCC until such time as an order of the FCC granting, denying or dismissing the application, petition to deny, informal objection or other pleading is no longer subject to reconsideration by the FCC or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection or other pleading for which reimbursement is sought.

(4) "Other consideration" consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

§ 22.130 Petitions to deny, responsive pleadings.

Petitions to deny any major filing may be filed by parties able to demonstrate standing to file such petitions. Responsive pleadings to such petitions may be filed in accordance with the provisions of this section.

(a) Content and requirements. Petitions to deny and responsive pleadings must:

(1) Clearly identify the pertinent major filing(s);

(2) Comply with all applicable requirements of § 1.41 through § 1.52 of this chapter;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, are supported by affidavit of a person or persons with personal knowledge thereof, and which are sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant or other FCC action regarding the major filing would be inconsistent with the public interest;

(4) Be filed within 30 days after the date of the Public Notice listing the major filing; and,

(5) Contain a certificate of service showing that a copy has been mailed to the applicant no later than the date of filing with the FCC.

(b) Expansion. Petitions to deny a major amendment to an application may raise only matters directly related to the major amendment that could not have been raised in connection with the application as originally filed. This paragraph does not apply to petitioners who gain standing because of the major amendment.

(c) Dismissal. The FCC may, by letter, dismiss any petition to deny a major filing if the petition does not comply with the requirements of this section, if the issues raised become moot, or if the petitioner or his/her attorney fails to appear at a settlement conference pursuant to § 22.135. The reason(s) for the dismissal are stated in the letter. When a petition to deny is dismissed, any related responsive pleadings are also dismissed.

§ 22.131 Mutually exclusive applications.

Two or more pending applications are mutually exclusive if the grant of one application would effectively preclude the grant of one or more of the others under the rules governing the Public Mobile service involved.

(a) Procedures. Procedures for disposing of mutually exclusive applications are prescribed in the subparts of this part governing the individual Public Mobile Services and in Part 1 of this chapter. The FCC may first dismiss any applications that are untimely filed or otherwise subject to dismissal under § 22.128. If any remaining applications continue to be mutually exclusive, the FCC may grant one of the mutually exclusive applications and dismiss the rest pursuant to § 22.128. In selecting the application to grant, the FCC may use competitive bidding, random selection processes or comparative hearings, depending on the nature of the mutually exclusive applications involved.

(b) Separate applications. Applicants that file an application, knowing that it will be mutually exclusive with one or more applications, should not include in the mutually exclusive application a request for other channels or facilities that would not, by themselves, render the application mutually exclusive with those other applications. Instead, the request for such other channels or facilities should be filed in a separate application.

§ 22.132 Grants of applications.

Applications for authorization may be granted thirty days after the issuance date of a Public Notice listing an application or the latest filed major amendment thereto as acceptable for filing.

(a) Criteria for grants. The FCC grants applications without a hearing if, after examination of the application and consideration of any petitions or other pleadings and of such other matters as it may officially notice, the FCC finds that:

(1) A grant will serve the public interest, convenience, and necessity;

(2) There are no substantial and material questions of fact presented;

(3) The applicant is eligible and qualified under applicable FCC regulations and policies;

(4) The application is acceptable for filing, and complies with the FCC rules and other applicable requirements;

(5) The application has not been designated for a hearing after being selected in a random selection process;

(6) There are no applications entitled to comparative consideration with the application being granted; and,

(7) Operation of the proposed station would not cause interference to any authorized station(s).

(b) Grant of petitioned applications. The FCC may grant, without a formal hearing, applications against which petitions to

deny have been filed. If any petition(s) to deny are pending (i.e. have not been dismissed pursuant to § 22.130(c) or withdrawn by the petitioner) when an application is granted, the FCC denies the petition(s) and issues a concise statement of the reason(s) for the denial, disposing of all substantive issues raised in the petitions.

(c) Partial and conditional grants. The FCC may grant applications in part, and/or subject to conditions other than those normally applied to authorizations of the same type. When the FCC does this, it will inform the applicant of the reasons therefor. Such partial or conditional grants are final unless the FCC revises its action in response to a petition for reconsideration. Such petitions for reconsideration must be filed by the applicant within thirty days after the date of the letter or order stating the reasons for the partial or conditional grant, and must reject the partial or conditional grant and return the instrument of authorization.

(d) Designation for hearing. The FCC may designate applications for a hearing, specifying with particularity the matters in issue, if, after consideration of the application, any petitions or other pleadings, and other matters which it may officially notice, the FCC is unable to make one or more of the findings listed in paragraph (a) of this section. The FCC may grant, deny or take other action with respect to applications designated for a hearing.

§ 22.135 Settlement conference.

Parties are encouraged to use alternative dispute resolution procedures to settle disputes (see Subpart E of Part 1 of this chapter). In any contested proceeding, the FCC, in its discretion, may direct the parties or their attorneys to appear before it for a conference.

(a) The purposes of such conferences are:

(1) To obtain admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(2) To consider the necessity for or desirability of amendments to the pleadings, or of additional pleadings or evidentiary submissions;

(3) To consider simplification or narrowing of the issues;

(4) To encourage settlement of the matters in controversy by agreement between the parties; and,

(5) To consider other matters that may aid in the resolution of the contested proceeding.

(b) Conferences are scheduled by the FCC at a time and place it may designate, to be conducted in person or by telephone conference call.

(c) The failure of any party or attorney, following reasonable notice, to appear at a scheduled conference will be deemed a failure to prosecute, subjecting that party's application or petition to dismissal by the FCC pursuant to § 22.128(c) or § 22.130(c).

§ 22.137 Assignment of authorization; transfer of control.

Authorizations in the Public Mobile Services may be assigned by the licensee to another party, voluntarily or involuntarily, directly or indirectly, or by transfer of control of a licensee holding such authorizations, only upon approval by the FCC. The assignee is responsible for ascertaining that the station facilities are and will remain in compliance with the terms and conditions of the authorization to be assigned.

(a) Application required. The assignor or transferor must file an application for approval of assignment or transfer of control (FCC Form 490). In the case of involuntary assignment, such application must be filed no later than 30 days after the event causing the assignment. The assignee or transferee must file a report qualifying it as a common carrier (FCC Form 430) unless a current report is already on file with the FCC.

(b) Notification of completion. Assignments and transfers of control must be completed within 60 days of FCC approval. The assignee or transferee must notify the FCC by letter of the date of completion of the assignment or transfer of control. If an assignment or transfer of control is not completed within this time, the assignor or transferor must so notify the FCC by letter, and the assignee or transferee must submit the authorization(s) to the FCC for cancellation or request an extension of time to complete the assignment or transfer of control. If the assignment or transfer of control is not completed, the authorization(s) remain with the assignor or transferor.

(c) Partial assignment of authorization. If the authorization for some, but not all, of the facilities of a Public Mobile Services station is assigned to another party, voluntarily or involuntarily, such action is a partial assignment of authorization.

(1) To request FCC approval of a partial assignment of authorization, the following must be filed in addition to the forms required by paragraph (a) of this section:

(i) The assignor must notify the FCC (FCC Form 489) of the facilities to be deleted from its authorization upon completion of the assignment.

(ii) The assignee must apply for authority (FCC Form 401) to operate a new station including the facilities for which authorization is assigned, or to modify the assignee's existing station to include the facilities for which authorization was assigned.

(2) Partial assignments must be completed within 60 days of FCC approval. If an approved partial assignment is not

completed within this time, the assignor must notify the FCC (FCC Form 489), and the assignee must submit the authorization(s) to the FCC for cancellation or request an extension of time to complete the assignment. If the assignment is not completed, the authorization(s) remain with the assignor.

(d) Limitations. The FCC may deny applications for assignment of authorization or consent to transfer of control if:

(1) The FCC is unable to make the findings contained in § 22.132(a) with respect to both parties to the assignment or transfer;

(2) The authorization was obtained for the principal purpose of speculation or profitable resale, rather than provision of common carrier telecommunication services to the public; or,

(3) The authorization is for a commercial aviation system in the Air-ground Radiotelephone Service or an unserved area cellular system in the Cellular Radiotelephone Service and the system has not been constructed or operated, or has been operated for less than one year.

(i) Licensees must not enter into agreements (e.g. option agreements or management contracts) to assign authorizations before or during the first year of operation, even if the assignment is to take place after the first year of operation.

(ii) Notwithstanding the introductory texts of paragraphs (d) and (d)(3) of this section, the FCC may grant applications for pro forma assignments during the first year of operation.

§ 22.139 Trafficking.

Carriers must not obtain or attempt to obtain an authorization in the Public Mobile services for the principal purpose of speculation or profitable resale of the authorization, but rather for the provision of common carrier telecommunication services to the public.

(a) Applications for approval of assignment of authorization may be reviewed by the FCC to determine if the circumstances indicate trafficking in Public Mobile services authorizations.

(b) The FCC may require submission of an affirmative, factual showing, supported by affidavit of persons with personal knowledge thereof, to demonstrate that the assignor did not acquire the authorization for the principal purpose of speculation or profitable resale of the authorization. This showing may include, for example, a demonstration that the proposed assignment is due to changed circumstances (described in detail) affecting the licensee after the grant of the authorization, or that the proposed assignment is incidental to a sale of other facilities or a merger of interests.

§ 22.142 Commencement of service; notification requirement.

Stations must begin providing service to subscribers no later than the date of required commencement of service specified on the authorization. If service to subscribers has not begun by the date of required commencement of service, the authorization terminates, in whole or in part, without action by the FCC, pursuant to § 22.144. Additional requirements for construction of facilities apply to cellular systems (see § 22.946) and commercial aviation air-ground systems (see § 22.873).

(a) Construction period. The period between the date of grant of an authorization and the date of required commencement of service is referred to as the construction period. The terms of construction periods are given in the subparts of this part governing each Public Mobile Service.

(b) Notification requirement. Licensees must notify the FCC (FCC Form 489) of commencement of service to subscribers. The notification must be mailed or delivered to the filing place (see § 22.106) no later than 15 days after service begins.

(1) The notification must state whether the station was constructed exactly as authorized or with minor changes.

(2) If service to subscribers has begun using some, but not all, of the authorized transmitters, the notification must show to which specific transmitters it applies. Additional notifications must be filed if and when other transmitters commence providing service to subscribers. If the licensee no longer intends to construct and/or operate the remaining authorized transmitters, the notification should so state.

(3) This section does not require licensees to notify the FCC of facilities added or modified pursuant to the provisions of §§ 22.163 and 22.165. It applies only to facilities specifically listed in authorizations for which a construction period is provided.

(c) Requests for extension. Before the date of required commencement of service, licensees may file an application (FCC Form 401) requesting an extension of the construction period.

(1) The FCC may grant applications for extension of the construction period if the licensee shows that failure to commence providing service to subscribers is due to causes beyond its control.

(2) The FCC does not grant applications for extension of the construction period if failure to commence providing service to subscribers is due to delays caused by lack of financing, failure to obtain an antenna site, or failure to order equipment in a timely manner. If the licensee orders equipment within 90 days of the authorization grant, a presumption of diligence is created.

(3) The FCC does not grant applications for extension of the construction period if the licensee fails to commence providing service to subscribers because it intends to assign the authorization. The FCC does not grant applications for extension of the construction period solely to allow an assignee to complete facilities the assignor failed to construct.

(d) Automatic extension for relocation. If, prior to the end of the construction period, a licensee files an application (FCC Form 401) to relocate a transmitter because of involuntary loss of the proposed site or for other reasons due to causes beyond the licensee's control, the construction period is automatically extended pending disposition of that application.

(1) Extension of the construction period for one transmitter under this paragraph does not extend the construction period for other transmitters under the same authorization that are not to be relocated.

(2) The filing of applications for modifications other than involuntary relocation does not automatically extend the construction period.

§ 22.143 Construction prior to grant of application.

Applicants may construct facilities in the Public Mobile services prior to grant of their applications, subject to the provisions of this section, but must not operate such facilities until the FCC grants an authorization. If the conditions stated in this section are not met, applicants must not begin to construct facilities in the Public Mobile Services.

(a) When applicants may begin construction. An applicant may begin construction of a facility 35 days after the date of the Public Notice listing the application for that facility as acceptable for filing, except that an applicant whose application to operate a new cellular system was selected in a random selection process may begin construction of that new cellular system 35 days after the date of the Public Notice listing it as the tentative selectee.

(b) Notification to stop. If the FCC for any reason determines that construction should not be started or should be stopped while an application is pending, and so notifies the applicant, orally (followed by written confirmation) or in writing, the applicant must not begin construction or, if construction has begun, must stop construction immediately.

(c) Assumption of risk. Applicants that begin construction pursuant to this section before receiving an authorization do so at their own risk and have no recourse against the United States for any losses resulting from:

(1) Applications that are not granted;

(2) Errors or delays in issuing Public Notices;

(3) Having to alter, relocate or dismantle the facility; or

(4) Incurring whatever costs may be necessary to bring the facility into compliance with applicable laws, or FCC rules and orders.

(d) Conditions. Except as indicated, all pre-grant construction is subject to the following conditions:

(1) The application is not mutually exclusive with any other application, except for successful bidders and tentative selectees in the Cellular Radiotelephone Service;

(2) No petitions to deny the application have been filed;

(3) The application does not include a request for a waiver of one or more FCC rules;

(4) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, the licensee has notified the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1), filed a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, PRB, Support Services Branch, Gettysburg, PA 17325;

(5) The applicant has indicated in the application that the proposed facility would not have a significant environmental effect, in accordance with §§ 1.1301 through 1.1319 of this chapter; and,

(6) Under applicable international agreements and rules in this part, individual coordination of the proposed channel assignment(s) with a foreign administration is not required.

§ 22.144 Termination of authorizations.

Authorizations in the Public Mobile Services remain valid until terminated in accordance with this section, except that the FCC may revoke an authorization pursuant to § 312 of the Communications Act of 1934, as amended (47 U.S.C. § 312).

(a) Expiration. Authorizations automatically terminate, without specific FCC action, on the expiration date specified therein, unless a timely application for renewal is filed (see § 22.145). No authorization granted under the provisions of this part shall be for a longer term than ten years. See 47 U.S.C. § 307(c).

(b) Failure to commence providing service to subscribers. Authorizations automatically terminate, in whole or in part, without specific FCC action, on the date of required commencement of service, if service to subscribers is not commenced by that date (see § 22.142), except as provided in paragraph (b)(1) of this section.

(1) Authorizations do not terminate while a timely filed

application for extension of the construction period is pending (see § 22.142(c)).

(2) If a timely filed application for extension of the construction period is dismissed or denied, the authorization automatically terminates, in whole or in part, without specific FCC action, on the day after the applicant or the applicant's attorney is notified of the FCC's action dismissing or denying the application for extension of the construction period.

(c) Service discontinued. Authorizations automatically terminate, without specific FCC action, if service is permanently discontinued as provided in § 22.317.

(d) STAs. Special Temporary Authorizations (STAs) automatically terminate, without specific FCC action, at the end of the period specified therein, except as provided in paragraph (d)(1) of this section, or upon failure to comply with the terms and conditions therein.

(1) STAs do not terminate while a timely filed request for an extension of the STA term, in accordance with § 22.125(b), is pending.

(2) If a timely filed request for extension of the STA term is dismissed or denied, the STA automatically terminates, without specific FCC action, on the day after the applicant or the applicant's attorney is notified of the FCC's action dismissing or denying the request for extension.

(e) Cancellation. Authorizations submitted by licensees for cancellation terminate when the FCC gives Public Notice of such action.

§ 22.145 Renewal application procedures.

Applications for renewal (FCC Form 405) of expiring authorizations must be filed by the licensee prior to, but no earlier than 30 days before, the expiration date of the authorization. A separate application is required for each authorization (call sign). Competing applications from parties wishing to challenge the renewal must be filed during the same 30 day period. Additional renewal requirements applicable only to specific Public Mobile Services are set forth in the subparts governing those services.

§ 22.150 Standard pre-filing technical coordination procedure.

For operations on certain channels in the Public Mobile Services, carriers must attempt to coordinate the proposed use of spectrum with other affected spectrum users prior to filing an application for authority to operate a station. Rules requiring this procedure for specific channels and types of stations are contained in the subparts governing the individual Public Mobile Services.

(a) Coordination comprises two steps - notification and response. Each step may be accomplished orally or in writing.

(b) Notification must include relevant technical details of the proposal. At minimum, this should include the following:

(1) Geographical coordinates of the antenna site(s).

(2) Transmitting and receiving channels to be added or changed.

(3) Transmitting power, emission type and polarization.

(4) Transmitting antenna pattern and maximum gain.

(5) Transmitting antenna height above ground level.

(c) Applicants and licensees receiving notification must respond promptly, even if no channel usage conflicts are anticipated. If any notified party fails to respond within 30 days, the applicant may file the application without a response from that party.

(d) The 30-day period begins on the date of receipt of the notification by the party being notified. If the notification is by mail, this date may be ascertained by:

(1) The return receipt on certified mail,

(2) The enclosure of a card to be dated and returned by the party being notified, or

(3) A reasonable estimate of the time required for the mail to reach its destination. In this case, the date when the 30-day period will expire must be stated in the notification.

(e) All channel usage conflicts discovered during the coordination process should be resolved prior to filing of the application. If the applicant is unable or unwilling to resolve a particular conflict, the application may be accepted for filing if it contains a statement describing the unresolved conflict and a brief explanation of the reasons why a resolution was not achieved.

(f) If a number of changes in the technical parameters of a proposed facility become necessary during the course of the coordination process, an attempt should be made to minimize the number of separate notifications. If the changes are incorporated into a completely revised notice, the items that were changed from the previous notice should be identified.

(g) In situations where subsequent changes are not numerous or complex, the party receiving the changed notification should make an effort to respond in less than 30 days. If the applicant believes a shorter response time is reasonable and appropriate, it should so indicate in the notice and suggest a response date.

(h) If a subsequent change in the technical parameters of a proposed facility could not affect the facilities of one or more of the parties that received an initial notification, the applicant is not required to coordinate that change with these parties. However, these parties must be advised of the change and of the opinion that coordination is not required.

§ 22.157 Distance computation.

The method given in this section must be used to compute the distance between any two locations, except that, for computation of distance involving stations in Canada and Mexico, methods for distance computation specified in the applicable international agreement, if any, must be used instead. The method set forth in this paragraph is considered to be sufficiently accurate for distances not exceeding 475 km (295 miles).

(a) Convert the latitudes and longitudes of each reference point from degree-minute-second format to degree-decimal format by dividing minutes by 60 and seconds by 3600, then adding the results to degrees.

$$LATX_{dd} = DD + \frac{MM}{60} + \frac{SS}{3600}$$

$$LONX_{dd} = DDD + \frac{MM}{60} + \frac{SS}{3600}$$

(b) Calculate the mean geodetic latitude between the two reference points by averaging the two latitudes:

$$ML = \frac{LAT1_{dd} + LAT2_{dd}}{2}$$

(c) Calculate the number of kilometers per degree latitude difference for the mean geodetic latitude calculated in paragraph (b) as follows:

$$KPD_{lat} = 111.13209 - 0.56605 \cos 2ML + 0.00120 \cos 4ML$$

(d) Calculate the number of kilometers per degree of longitude difference for the mean geodetic latitude calculated in paragraph (b) as follows:

$$KPD_{lon} = 111.41513 \cos ML - 0.09455 \cos 3ML + 0.00012 \cos 5ML$$

(e) Calculate the North-South distance in kilometers as follows:

$$NS = KPD_{lat} \times (LAT1_{dd} - LAT2_{dd})$$

(f) Calculate the East-West distance in kilometers as follows:

$$EW = KPD_{lon} \times (LON1_{dd} - LON2_{dd})$$

(g) Calculate the distance between the two locations by taking the square root of the sum of the squares of the East-West and North-South distances:

$$DIST = \sqrt{NS^2 + EW^2}$$

(h) Terms used in this section are defined as follows:

(1) $LAT1_{dd}$ and $LON1_{dd}$ are the coordinates of the first location in degree-decimal format.

(2) $LAT2_{dd}$ and $LON2_{dd}$ are the coordinates of the second location in degree-decimal format.

(3) ML is the mean geodetic latitude in degree-decimal format.

(4) KPD_{lat} is the number of kilometers per degree of latitude at a given mean geodetic latitude.

(5) KPD_{lon} is the number of kilometers per degree of longitude at a given mean geodetic latitude.

(6) NS is the North-South distance in kilometers.

(7) DIST is the distance between the two locations, in kilometers.

§ 22.159 Computation of average terrain elevation.

Average terrain elevation must be calculated by computer using elevations from a 30 second point or better topographic data file. The file must be identified. If a 30 second point data file is used, the elevation data must be processed for intermediate points using interpolation techniques; otherwise, the nearest point may be used. In cases of dispute, average terrain elevation determinations can also be done manually, if the results differ significantly from the computer derived averages.

(a) Radial average terrain elevation is calculated as the average of the elevation along a straight line path from 3 to 16 kilometers (2 and 10 miles) extending radially from the antenna site. If a portion of the radial path extends over foreign territory or water, such portion must not be included in the computation of average elevation unless the radial path again passes over United States land between 16 and 134 kilometers (10 and 83 miles) away from the station. At least 50 evenly spaced data points for each radial should be used in the computation.

(b) Average terrain elevation is the average of the eight radial average terrain elevations (for the eight cardinal radials).

(c) For locations in Dade and Broward Counties, Florida, the method prescribed above may be used or average terrain elevation may be assumed to be 3 meters (10 feet).

§ 22.161 Application requirements for ASSB.

Applications for base stations employing amplitude

compandored single sideband modulation (ASSB) must contain the following information:

(a) The application must describe fully the modulation characteristics, emission and occupied bandwidth, and specify the center frequency of the emission for each channel, carrier frequency, and pilot channels, if any. The emission must fall completely within a channel assignable for two-way operation in the Paging and Radiotelephone Service, Rural Radiotelephone Service or Offshore Radiotelephone Service.

(b) The application must contain interference studies between stations within an authorized bandwidth, whether FM-to-ASSB, ASSB-to-FM, or ASSB-to-ASSB in accordance with the following: For ASSB stations, the transmitter nearest to the protected station must be used. The effective radiated power in the direction of the protected station must be the sum of the peak effective radiated power of all transmitters in the group, in the direction of the protected station. The antenna center of radiation height above average terrain must be the highest antenna center of radiation height of any transmitter in the group in the direction of the protected station. The channel of the group is assumed to be the same as that of the protected station (co-channel), and studies must be made in accordance with § 22.567.

§ 22.163 Minor modifications to existing stations.

Licensees may make modifications to existing stations without obtaining prior Commission approval provided:

(a) Classification as minor. The modifications must be minor. Modifications to a station are minor if an application filed solely for the purpose of obtaining authorization for such modifications would not be classified as major in accordance with § 22.123.

(b) International coordination. The modifications are limited to those for which individual coordination of the channel assignment(s) with a foreign administration, under applicable international agreements and rules in this part, is not required.

(c) Antenna structure clearance required. For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, PRB, Support Services Branch, Gettysburg, PA 17325.

(d) Provision of information upon request. Licensees must supply administrative or technical information concerning the modified facilities upon request by the FCC. At the time modifications are made pursuant to this section, licensees must make a record of the pertinent technical and administrative information so that such information is readily available. See § 22.303.

(e) Notification required for modifications affecting CGSA. Licensees in the Cellular Radiotelephone Service must notify the FCC (FCC Form 489) of any modifications made under this section that cause a change in the Cellular Geographic Service Area boundary (including the removal of a transmitter or transmitters). The notification must include full size and reduced maps, and supporting engineering, as described in § 22.953(a)(5)(i) through (iii). If the modification involves a contract service area boundary (SAB) extension (see § 22.912), the notification must include a statement as to whether the five year build-out period for the system on the relevant channel block in the market into which the SAB extends has elapsed, and whether the SAB extends into any unserved area in that market. The notification must be mailed or delivered to the filing place (see § 22.106) no later than 15 days after the modification is made.

§ 22.165 Additional transmitters for existing systems.

A licensee may operate additional transmitters at additional locations on the same channel or channel block as its existing system without obtaining prior Commission approval provided:

(a) International coordination. The locations and/or technical parameters of the additional transmitters are such that individual coordination of the channel assignment(s) with a foreign administration, under applicable international agreements and rules in this part, is not required.

(b) Antenna structure clearance required. For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, PRB, Support Services Branch, Gettysburg, PA 17325.

(c) Environmental. The additional transmitters must not have a significant environmental effect as defined by §§ 1.1301 through 1.1319 of this chapter.

(d) Paging and Radiotelephone Service. The provisions in this paragraph apply for stations in the Paging and Radiotelephone Service.

(1) The service area and interfering contours of the additional transmitter(s) must be totally encompassed by the composite service area contour and predicted interfering contour, respectively, of the existing station on the same channel; except that this limitation does not apply to nationwide network paging stations or in-building radiation systems.

(2) Additional transmitters in the 43 MHz frequency range operate under developmental authority, subject to the conditions

set forth in § 22.411.

(3) The additional transmitters must not operate on control channels in the 72-76 MHz, 470-512 MHz, 928 MHz, 932 MHz, 941 MHz or 959 MHz frequency ranges.

(e) Cellular Radiotelephone Service. During the five year build-out period, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a), must remain within the market, except that the service area boundaries may extend beyond the market boundary into area that is part of the CGSA or is already encompassed by the service area boundaries of previously authorized facilities. After the five year build-out period, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a), must remain within the CGSA. Licensees must notify the FCC (FCC Form 489) of any transmitters added under this section that cause a change in the CGSA boundary. The notification must include full size and reduced maps, and supporting engineering, as described in § 22.953(a)(5)(i) through (iii). If the addition of transmitters involves a contract service area boundary (SAB) extension (see § 22.912), the notification must include a statement as to whether the five year build-out period for the system on the relevant channel block in the market into which the SAB extends has elapsed, and whether the SAB extends into any unserved area in that market. The notification must be mailed or delivered to the filing place (see § 22.106) no later than 15 days after the addition is made.

(f) Air-ground Radiotelephone Service. Ground stations may be added to Commercial Aviation air-ground systems at previously established ground station locations, pursuant to § 22.859, subject to compliance with the applicable technical rules. This section does not apply to General Aviation air-ground stations.

(g) Rural Radiotelephone Service. A "service area" and "interfering contours" must be determined using the same method as for stations in the Paging and Radiotelephone Service. The service area and interfering contours so determined for the additional transmitter(s) must be totally encompassed by the similarly determined composite service area contour and predicted interfering contour, respectively, of the existing station on the same channel. This section does not apply to Basic Exchange Telecommunications Radio Systems.

(h) Offshore Radiotelephone Service. This section does not apply to stations in the Offshore Radiotelephone Service.

(i) Provision of information upon request. Upon request by the FCC, licensees must supply administrative or technical information concerning the additional transmitters. At the time transmitters are added pursuant to this section, licensees must make a record of the pertinent technical and administrative information so that such information is readily available. See § 22.303.

§ 22.169 International coordination of channel assignments.

Channel assignments under this part are subject to the applicable provisions and requirements of treaties and other international agreements between the United States government and the governments of Canada and Mexico.

Subpart C - Operational and Technical Requirements

OPERATIONAL REQUIREMENTS

§ 22.301 Station inspection.

The licensee of any station authorized in the Public Mobile Services must make the station and station records available for inspection by representatives of the FCC at any reasonable hour.

§ 22.303 Retention of station authorizations; identifying transmitters.

The current authorization for each station, together with current administrative and technical information concerning modifications to facilities pursuant to § 22.163 and added facilities pursuant to § 22.165 must be retained as a permanent part of the station records. A clearly legible photocopy of the authorization must be available at each regularly attended control point of the station, or in lieu of this photocopy, licensees may instead make available at each regularly attended control point the address or location where the licensee's current authorization and other records may be found. The station call sign must be clearly and legibly marked on or near every transmitting facility, other than mobile transmitters, of the station.

§ 22.305 Operator and maintenance requirements.

FCC operator permits and licenses are not required to operate, repair or maintain equipment authorized in the Public Mobile Services. Station licensees are responsible for the proper operation and maintenance of their stations, and for compliance with FCC rules.

§ 22.307 Operation during emergency.

Licensees of stations in the Public Mobile services may, during a period of emergency in which normal communications facilities are disrupted as a result of hurricane, flood, earthquake or other natural disaster, civil unrest, widespread vandalism, national emergencies or emergencies declared by Executive Order of the President, use their stations to temporarily provide emergency communications services in a manner or configuration not normally allowed by this part, provided that such operations comply with the provisions of this section.

(a) Technical limitations. Public Mobile stations providing temporary emergency communications service must not

transmit:

(1) On channels other than those authorized for normal operations;

(2) With power in excess of that authorized for normal operations;

(3) Emission types other than those authorized for normal operations.

(b) Discontinuance. Temporary emergency use of Public Mobile stations must be discontinued as soon as normal communication facilities are restored. The FCC may, at any time, order the discontinuance of any such emergency communication services.

§ 22.313 Station identification.

The licensee of each station in the Public Mobile Services must ensure that the transmissions of that station are identified in accordance with the requirements of this section.

(a) Station identification is not required for transmissions by:

(1) Stations in the Cellular Radiotelephone Service;

(2) General aviation ground stations in the Air-ground Radiotelephone Service;

(3) Rural subscriber stations using meteor burst propagation mode communications in the Rural Radiotelephone Service;

(4) Rural subscriber stations using Basic Exchange Telephone Radio Systems in the Rural Radiotelephone Service.

(b) For all other stations in the Public Mobile Services, station identification must be transmitted at the end of each transmission or series of transmissions. During prolonged or continuous series of transmissions, station identification must be transmitted at periodic intervals not to exceed thirty minutes; however, transmission of such periodic station identification may be temporarily delayed to avoid interrupting the continuity of any public communication in progress, provided that station identification is transmitted at the conclusion of that public communication.

(c) Station identification must be transmitted by telephony using the English language or by telegraphy using the international Morse code, and in a form that can be received using equipment appropriate for the modulation type employed, and understood without the use of unscrambling devices. Station identification comprises transmission of the call sign assigned by the FCC to the station, however, the following may be used in lieu of the call sign:

(1) For transmissions from subscriber operated transmitters, the telephone number or other designation assigned by the carrier, provided that a written record of such designations is maintained by the carrier;

(2) For general aviation airborne mobile stations in the Air-ground Radiotelephone Service, the official FAA registration number of the aircraft;

(3) For stations in the Paging and Radiotelephone Service, a call sign assigned to another station within the same system.

§ 22.315 Duty to respond to official communications.

Licensees in the Public Mobile services must respond to official communications from the FCC with reasonable dispatch and according to the tenor of the communication. Failure to do so may be considered by the FCC to reflect adversely on a carrier's qualifications to hold FCC authorizations, and may also create liabilities for other sanctions.

(a) Any person receiving official notice of an apparent or actual violation of a federal statute, international agreement, Executive Order, or regulation pertaining to communications shall respond in writing within 10 days to the office of the FCC originating the notice. If a response can not be sent within 10 days, an acknowledgement shall be sent, followed by a response as soon as possible explaining the reason for the delay.

(b) Responses to official communications must be complete and self-contained without reference to other communications unless copies of such other communications are attached to the response.

§ 22.317 Discontinuance of station operation.

If the operation of a Public Mobile Services station is permanently discontinued, the licensee shall send the authorization for cancellation to: Mobile Services Division, Common Carrier Bureau, Federal Communications Commission, Washington DC 20554. For purposes of this section, any station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued, unless the applicant notified the FCC otherwise prior to the end of the 90 day period and provided a date on which operation will resume, which date must not be in excess of 30 additional days.

§ 22.321 Equal employment opportunities.

Public Mobile Services licensees shall afford equal opportunity in employment to all qualified persons, and personnel must not be discriminated against in employment because of sex, race, color, religion, or national origin.

(a) Equal employment opportunity program. Each licensee shall establish, maintain, and carry out a positive continuing

program of specific practices designed to assure equal opportunity in every aspect of employment policy and practice.

(1) Under the terms of its program, each licensee shall:

(i) Define the responsibility of each level of management to insure a positive application and vigorous enforcement of the policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance.

(ii) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation.

(iii) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to sex, race, color, religion or national origin, and solicit their recruitment assistance on a continuing basis.

(iv) Conduct a continuing campaign to exclude every form of prejudice or discrimination based upon sex, race, color, religion, or national origin, from the licensee's personnel policies and practices and working conditions.

(v) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design and other measures needed in order to insure genuine equality of opportunity to participate fully in all organizational units, occupations and levels of responsibility.

(2) The program must reasonably address specific concerns through policies and actions as set forth in this paragraph, to the extent that they are appropriate in consideration of licensee size, location and other factors.

(i) To assure nondiscrimination in recruiting.

(A) Posting notices in the licensee's offices informing applicants for employment of their equal employment rights and their right to notify the Equal Employment Opportunity Commission (EEOC), the Federal Communications Commission (FCC), or other appropriate agency. Where a substantial number of applicants are Spanish-surnamed Americans, such notice should be posted in both Spanish and English.

(B) Placing a notice in bold type on the employment application informing prospective employees that discrimination because of sex, race, color, religion or national origin is prohibited, and that they may notify the EEOC, the FCC or other appropriate agency if they believe they have been discriminated against.

(C) Placing employment advertisements in media which have significant circulation among minority groups in the recruiting area.

(D) Recruiting through schools and colleges with significant minority group enrollments.

(E) Maintaining systematic contacts with minority and human relations organizations, leaders and spokespersons to encourage referral of qualified minority or female applicants.

(F) Encouraging present employees to refer minority or female applicants.

(G) Making known to the appropriate recruitment sources in the employer's immediate area that qualified minority members are being sought for consideration whenever the licensee hires.

(ii) To assure nondiscrimination in selection and hiring.

(A) Instructing employees of the licensee who make hiring decisions that all applicants for all jobs are to be considered without discrimination.

(B) Where union agreements exist, cooperating with the union or unions in the development of programs to assure qualified minority persons or females of equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements.

(C) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

(iii) To assure nondiscriminatory placement and promotion.

(A) Instructing employees of the licensee who make decisions on placement and promotion that minority employees and females are to be considered without discrimination, and that job areas in which there is little or no minority or female representation should be reviewed to determine whether this results from discrimination.

(B) Giving minority groups and female employees equal opportunity for positions which lead to higher positions. Inquiring as to the interest and skills of all lower-paid employees with respect to any of the higher-paid positions, followed by assistance, counseling, and effective measures to enable employees with interest and potential to qualify themselves for such positions.

(C) Reviewing seniority practices to insure that such practices are nondiscriminatory and do not have a discriminatory effect.

(D) Avoiding use of selection techniques or tests that have the effect of discriminating against minority groups or females.

(iv) To assure nondiscrimination in other areas of employment practices.

(A) Examining rates of pay and fringe benefits for present

employees with equivalent duties and adjusting any inequities found.

(B) Providing opportunity to perform overtime work on a basis that does not discriminate against qualified minority groups or female employees.

(b) EEO statement. Each licensee having 16 or more full-time employees shall file with the FCC, no later than May 31st following the grant of that licensee's first Public Mobile Services authorization, a statement describing fully its current equal employment opportunity program, indicating specific practices to be followed in order to assure equal employment opportunity on the basis of sex, race, color, religion or national origin in such aspects of employment practices as regards recruitment, selection, training, placement, promotion, pay, working conditions, demotion, layoff and termination. Any licensee having 16 or more full-time employees that changes its existing equal employment opportunity program shall file with the FCC, no later than May 31st thereafter, a revised statement reflecting the change(s).

NOTE to paragraph (b) of § 22.321: Licensees having 16 or more full-time employees that were granted their first Public Mobile Services authorization prior to January 1, 1995, and do not have a current EEO statement on file with the FCC, must file such statement, required by paragraph (b) of this section, no later than May 31, 1995.

(c) Report of complaints filed against licensees. Each licensee, regardless of how many employees it has, shall submit an annual report to the FCC no later than May 31st of each year indicating whether any complaints regarding violations by the licensee or equal employment provisions of Federal, State, Territorial, or local law have been filed before anybody having competent jurisdiction.

(1) The report should state the parties involved, the date filing, the courts or agencies before which the matters have been heard, the appropriate file number (if any), and the respective disposition or current status of any such complaints.

(2) Any licensee who has filed such information with the EEOC may file a notification of such filing with the FCC in lieu of a report.

(d) Complaints of violations of Equal Employment Programs. Complaints alleging employment discrimination against a common carrier licensee are considered by the FCC in the following manner:

(1) If a complaint raising an issue of discrimination is received against a licensee who is within the jurisdiction of the EEOC, it is submitted to that agency. The FCC maintains a liaison with that agency that keeps the FCC informed of the disposition of complaints filed against common carrier licensees.

(2) Complaints alleging employment discrimination against a common carrier licensee who does not fall under the jurisdiction of the EEOC but is covered by appropriate enforceable State law, to which penalties apply, may be submitted by the FCC to the respective State agency.

(3) Complaints alleging employment discrimination against a common carrier licensee who does not fall under the jurisdiction of the EEOC or an appropriate State law, are accorded appropriate treatment by the FCC.

(4) The FCC will consult with the EEOC on all matters relating to the evaluation and determination of compliance by the common carrier licensees with the principles of equal employment as set forth herein.

(5) Complaints indicating a general pattern of disregard of equal employment practices which are received against a licensee that is required to file an employment report to the FCC under § 1.815(a) of this chapter are investigated by the FCC.

(e) FCC records. A copy of every annual employment report, equal employment opportunity program statement, reports on complaints regarding violation of equal employment provisions of Federal, State, Territorial, or local law, and copies of all exhibits, letters, and other documents filed as part thereof, all amendments thereto, all correspondence between the licensee and the FCC pertaining to the reports after they have been filed and all documents incorporated therein by reference, are open for public inspection at the offices of the FCC.

(f) Licensee records. Each licensee required to file annual employment reports (pursuant to § 1.815(a) of this chapter), equal employment opportunity program statements, and annual reports on complaints regarding violations of equal employment provisions of Federal, State, Territorial, or local law shall maintain for public inspection a file containing a copy of each such report and copies of all exhibits, letters, and other documents filed as part thereto, all correspondence between the licensee and the FCC pertaining to the reports after they have been filed and all documents incorporated therein by reference. The documents must be retained for a period of 2 years.

§ 22.323 Incidental communications services.

Carriers authorized to operate stations in the Public Mobile radio services may use these stations to provide other communications services incidental to the primary public mobile service for which the authorizations were issued, provided that:

(a) The costs and charges of subscribers who do not wish to use incidental services are not increased as a result of provision of incidental services to other subscribers;

(b) The quality of the primary public mobile service does not materially deteriorate as a result of provision of incidental

services, and neither growth nor availability of the primary public mobile service is significantly diminished as a result of provision of incidental services;

(c) The provision of the incidental services is not inconsistent with the Communications Act of 1934, as amended, or with FCC rules and policies; and

(d) The licensee notifies the FCC by letter before providing the incidental services. This notification must include a complete description of the incidental services.

§ 22.325 Control points.

Each station in the Public Mobile Services must have at least one control point and a person on duty who is responsible for station operation. This section does not require that the person on duty be at the control point or continuously monitor all transmissions of the station. However, the control point must have facilities that enable the person on duty to turn off the transmitters in the event of a malfunction.

TECHNICAL REQUIREMENTS

§ 22.351 Channel assignment policy.

The channels allocated for use in the Public Mobile Services are listed in the applicable subparts of this part. Channels and channel blocks are assigned in such a manner as to facilitate the rendition of service on an interference-free basis in each service area. Except as otherwise provided in this part, each channel or channel block is assigned exclusively to one common carrier in each service area. All applicants for, and licensees of, stations in the Public Mobile Services shall cooperate in the selection and use of channels in order to minimize interference and obtain the most efficient use of the allocated spectrum.

§ 22.352 Protection from interference.

Public Mobile Services stations operating in full accordance with applicable FCC rules and the terms and conditions of their authorizations are normally considered to be non-interfering. If the FCC determines, however, that interference which significantly interrupts or degrades a radio service is being caused, it may, after notice and an opportunity for a hearing, require modifications to any Public Mobile station as necessary to eliminate such interference.

(a) Failure to operate as authorized. Any licensee causing interference to the service of other stations by failing to operate its station in full accordance with its authorization and applicable FCC rules shall discontinue all transmissions, except those necessary for the immediate safety of life or property, until it can bring its station into full compliance with the authorization and rules.

(b) Intermodulation interference. Licensees should attempt to resolve such interference by technical means.

(c) Situations in which no protection is afforded. Except as provided elsewhere in this part, no protection from interference is afforded in the following situations:

(1) Interference to base receivers from base or fixed transmitters. Licensees should attempt to resolve such interference by technical means or operating arrangements.

(2) Interference to mobile receivers from mobile transmitters. No protection is provided against mobile-to-mobile interference.

(3) Interference to base receivers from mobile transmitters. No protection is provided against mobile-to-base interference.

(4) Interference to fixed stations. Licensees should attempt to resolve such interference by technical means or operating arrangements.

(5) Anomalous or infrequent propagation modes. No protection is provided against interference caused by tropospheric and ionospheric propagation of signals.

(6) Facilities for which the FCC not notified. No protection is provided against interference to the service of any additional or modified transmitter operating pursuant to § 22.163 or § 22.165, unless and until the licensee notifies the FCC (FCC Form 489) of the additional or modified transmitter.

(7) In-building radiation systems. No protection is provided against interference to the service of in-building radiation systems (see § 22.383).

§ 22.353 Blanketing interference.

Licensees of Public Mobile services stations are responsible for resolving cases of blanketing interference in accordance with the provisions of this section.

(a) Except as provided in paragraph (c) of this section, licensees must resolve any cases of blanketing interference in their area of responsibility caused by operation of their transmitter(s) during a one-year period following commencement of service from new or modified transmitter(s). Interference must be resolved promptly at no cost to the complainant.

(b) The area of responsibility is that area in the immediate vicinity of the transmitting antenna of stations where the field strength of the electromagnetic radiation from such stations equals or exceeds 115 dBμV/m. To determine the radial distance to the boundary of this area, the following formula must be used:

$$d = 0.394 \times \sqrt{p}$$

where d is the radial distance to the boundary, in kilometers
p is the radial effective radiated power, in kilowatts

The maximum effective radiated power in the pertinent direction, without consideration of the antenna's vertical radiation pattern or height, must be used in the formula.

(c) Licensees are not required to resolve blanketing interference to mobile receivers or non-RF devices or blanketing interference occurring as a result of malfunctioning or mistuned receivers, improperly installed consumer antenna systems, or the use of high gain antennas or antenna booster amplifiers by consumers.

(d) Licensees that install transmitting antennas at a location where there are already one or more transmitting antennas are responsible for resolving any new cases of blanketing interference in accordance with this section.

(e) Two or more licensees that concurrently install transmitting antennas at the same location are jointly responsible for resolving blanketing interference cases, unless the FCC can readily determine which station is causing the interference, in which case the licensee of that station is held fully responsible.

(f) After the one year period of responsibility to resolve blanketing interference, licensees must provide upon request technical information to complainants on remedies for blanketing interference.

§ 22.355 Frequency tolerance.

Except as otherwise provided in this part, the carrier frequency of each transmitter in the Public Mobile Services must be maintained within the tolerances given in Table C-1.

§ 22.357 Emission types.

Any authorized station in the Public Mobile services may transmit the standard emission types set forth in this section, regardless of whether they are listed on the station authorization. Before using any emission type(s) other than those set forth in this section (e.g.), amplitude compandored single sideband), licensees must apply for (FCC Form 401) and obtain authority to do so, and must explain in detail the reason why such authority is needed. An explanation of the standard international emission designators used throughout the FCC rules is contained in Subpart C of Part 2 of this chapter.

(a) Any station in the Public Mobile Services may transmit unmodulated emissions (N0N) for short periods for equipment testing.

(b) Any station in the Paging and Radiotelephone Service, Rural Radiotelephone Service or Offshore Radiotelephone Service may transmit:

(1) Emissions of the following types: 15K0F2D, 16K0F3E, 16K0F3C, 16K0F1D, and 16K0F1E;

(2) Emissions resulting from modulation of transmitters by sub-audible tones or other signals used to establish and/or maintain communications;

(3) Continuous unmodulated emissions (N0N), with a power at least 10 dB less than that authorized, to prevent false indication of channel occupation.

(c) Any station in the Cellular Radiotelephone Service may transmit emissions of the following types: 40K0F3E, 40K0F3D and 40K0F1D. See also §§ 22.901 and 22.917.

Table C-1 - Frequency Tolerance for Transmitters in the Public Mobile Services

Frequency range	base, fixed	mobile > 3 Watts	mobile <= 3 Watts
25 to 50 MHz	20.0 ppm	20.0 ppm	50.0 ppm
50 to 450 MHz	5.0 ppm	5.0 ppm	50.0 ppm
450 to 512 MHz	2.5 ppm	5.0 ppm	5.0 ppm
821 to 896 MHz	1.5 ppm	2.5 ppm	2.5 ppm
928 to 929 MHz	5.0 ppm	n/a	n/a
929 to 960 MHz	1.5 ppm	n/a	n/a
2110 to 2220 MHz	10.0 ppm	n/a	n/a

(d) Basic Exchange Telephone Radio Systems in the Rural Radiotelephone Service may transmit emissions of the following type: 20K0D7W.

(e) The frequency deviation must not exceed 12 kHz for frequency modulated emissions with a bandwidth of 40 kHz, and 5 kHz for frequency modulated emissions with a bandwidth of 16 kHz.

§ 22.359 Emission masks.

Unless otherwise indicated in the rules governing a specific radio service, all transmitters intended for use in the Public Mobile Services must be designed to comply with the emission masks outlined in this section. If an emission outside of the authorized bandwidth causes harmful interference, the FCC may, at its discretion, require greater attenuation than specified in this section.

(a) Analog modulation. For transmitters other than those employing digital modulation techniques, the mean or peak envelope power of adjacent channel emissions must be attenuated below the output mean or peak envelope power of the total emission (P, in Watts) in accordance with the following schedule:

(1) On any frequency removed from the center frequency of the assigned channel by more than 50 percent up to and including 100 percent of the authorized bandwidth:

at least 25 dB;

(2) On any frequency removed from the center frequency of the assigned channel by more than 100 percent up to and including 250 percent of the authorized bandwidth:

at least 35 dB;

(3) On any frequency removed from the center frequency of the assigned channel by more than 250 percent of the authorized bandwidth:

at least 43 + 10 log P dB, or 80 dB, whichever is the lesser attenuation.

(b) Digital modulation. For transmitters not equipped with an audio low pass filter and for transmitters employing digital modulation techniques, the mean or peak envelope power of sideband emissions must be attenuated below the mean or peak envelope power of the total emission (P, in Watts) in accordance with the following schedule:

(1) For transmitters that operate in the frequency ranges 35 to 44 MHz, 72 to 73 MHz, 75.4 to 76.0 MHz and 152 to 159 MHz,

(i) On any frequency removed from the center frequency of the assigned channel by a displacement frequency f_d (in kHz) of more than 5 kHz but not more than 10 kHz:

at least 83 log ($f_d \div 5$) dB;

(ii) On any frequency removed from the center frequency of the assigned channel by a displacement frequency f_d (in kHz) of more than 10 kHz but not more than 250 percent of the authorized bandwidth:

at least 29 log ($f_d^2 \div 11$) dB or 50 dB, whichever is the lesser attenuation;

(iii) On any frequency removed from the center frequency of the assigned channel by more than 250 percent of the authorized bandwidth:

at least 43 + 10 log P dB, or 80 dB, whichever is the lesser attenuation.

(2) For transmitters that operate in the frequency ranges 450 to 512 MHz and 929 to 932 MHz,

(i) On any frequency removed from the center frequency of the assigned channel by a displacement frequency f_d (in kHz) of more than 5 kHz but not more than 10 kHz:

at least 83 log ($f_d \div 5$) dB;

(ii) On any frequency removed from the center frequency of the assigned channel by a displacement frequency f_d (in kHz) of more than 10 kHz but not more than 250 percent of the authorized bandwidth:

at least 116 log ($f_d \div 6.1$) dB, or 50 + 10 log P dB, or 70 dB, whichever is the lesser attenuation;

(iii) On any frequency removed from the center frequency of the assigned channel by more than 250 percent of the authorized bandwidth:

at least 43 + 10 log P dB, or 80 dB, whichever is the lesser attenuation.

(c) Measurement procedure. Either peak or average power may be used, provided that the same technique is used for both the adjacent channel or sideband emissions and the total emission. The resolution bandwidth of the measuring instrument must be set to 300 Hz for measurements on any frequency removed from the center frequency of the assigned channel by no more than 250 percent of the authorized bandwidth and 30 kHz for measurements on any frequency removed from the center frequency of the assigned channel by more than 250 percent of the authorized bandwidth.

Table C-2 - Technical Requirements for Directional Antennas

Frequency range	Maximum beamwidth	Suppression
35 to 512 MHz	80°	10 dB
512 to 1500 MHz	20°	13 dB
1500 to 2500 MHz	12°	13 dB

§ 22.361 Standby facilities.

Licensees of stations in the Public Mobile Services may install standby transmitters for the purpose of continuing service in the event of failure or during required maintenance of regular transmitters without obtaining separate authorization, provided that operation of the standby transmitters would not increase the service areas or interference potential of the stations, and that such standby transmitters use the same antenna as the regular transmitters they temporarily replace.

§ 22.363 Directional antennas.

Fixed transmitters for point-to-point operation must use a directional transmitting antenna with the major lobe of radiation in the horizontal plane directed toward the receiving antenna or passive reflector of the station for which the transmissions are intended. Directional antennas used in the Public Mobile Services must meet the technical requirements given in Table C-2.

(a) Maximum beamwidth is for the major lobe at the half power points.

(b) Suppression is the minimum attenuation for any secondary lobe referenced to the main lobe.

(c) An omnidirectional antenna may be used for fixed transmitters where there are two or more receive locations at different azimuths.

§ 22.365 Antenna structures; air navigation safety.

Licensees must not allow antenna structures to become a hazard to air navigation.

(a) Marking and lighting. Antenna structures must be marked, lighted and maintained in accordance with Part 17 of this chapter and all applicable rules and requirements of the Federal Aviation Administration. Lighting and marking specifications are contained in FCC Form 715 and FCC Form 715a.

(b) Maintenance contracts. Licensees may enter into a contract with an entity to monitor and carry out necessary maintenance of antenna structures. Licensees that make such contractual arrangements, including situations in which a common antenna structure is used, continue to be responsible for the maintenance of antenna structures in regard to air navigation safety.

§ 22.367 Wave polarization.

Public mobile station antennas must be of the correct type and properly installed such that the electromagnetic emissions have the polarization required by this section.

(a) Vertical. Waves radiated by the following must be vertically polarized:

(1) Base, mobile, dispatch, and auxiliary test transmitters in the Paging and Radiotelephone Service;

(2) Transmitters in the Offshore Radiotelephone Service;

(3) Transmitters on channels in the 72-76 MHz frequency range;

(4) Base, mobile and auxiliary test transmitters in the Cellular Radiotelephone Service;

(5) Control and repeater transmitters on channels in the 900-960 MHz frequency range;

(6) Rural subscriber stations communicating with base transmitters in the Paging and Radiotelephone Service pursuant to § 22.563.

(7) Ground and airborne mobile transmitters in the Air-ground Radiotelephone Service.

(b) Horizontal. Waves radiated by transmitters in the Public Mobile Services, other than transmitters required by paragraph (a) of this section to radiate a vertically polarized wave, must be horizontally polarized, except as otherwise provided in paragraphs (c) and (d) of this section.

(c) Circular. If communications efficiency would be improved and/or interference reduced, the FCC may authorize transmitters other than those listed in paragraphs (a)(1) through (a)(7) of this section to radiate a circularly polarized wave.

(d) Any polarization. Public Land Mobile stations transmitting on channels higher than 960 MHz are not limited as to wave polarization.

§ 22.369 Quiet zones.

Quiet zones are those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to interference. The areas involved and procedures required are as follows:

(a) NRAO, NRRO. The requirements of this paragraph are intended to minimize possible interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, West Virginia.

(1) Carriers planning to construct and operate a new or modified Public Mobile Services station at a permanent fixed location within the area bounded by N.39° 15′ on the north, W.78° 30′ on the east, N.37° 30′ on the south, and W.80° 30′ on the west must notify the Director, National Radio Astronomy Observatory, Post Office Box No. 2, Green Bank, West Virginia 24944, in writing, of the technical details of the proposed operation. The notification must include the geographical coordinates of the antenna location, the antenna height, antenna directivity (if any), the channel, the emission type and power.

(2) When an application for authority to operate a station is filed with the FCC, the notification required in paragraph (a)(1) of this section should be sent at the same time. The application must state the date that notification in accordance with paragraph (a)(1) of this section was made. After receipt of such applications, the FCC will allow a period of 20 days for comments or objections in response to the notifications indicated.

(3) If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the FCC will, after consideration of the record, take whatever action is deemed appropriate.

(b) Table Mountain. The requirements of this paragraph are intended to minimize possible interference at the Table Mountain Radio Receiving Zone of the Research Laboratories of the Department of Commerce located in Boulder County, Colorado.

(1) Carriers planning to construct and operate a new or modified Public Mobile Services station at a permanent fixed location in the vicinity of Boulder County, Colorado are advised to give consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from interference. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40° 07′ 50″ North Latitude, 105° 14′ 40″ West Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the values given in Table C-3.

(2) Advance consultation is recommended, particularly for applicants that have no reliable data to indicate whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities. In general, coordination is recommended for:

(i) Stations located within 2.4 kilometers (1.5 miles);

(ii) Stations located within 4.8 kilometers (3 miles) transmitting with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations located within 16 kilometers (10 miles) transmitting with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Radio

Table C-3 - Field Strength Limits for Table Mountain

Frequency range	Field strength	Power flux density
1.6 to 470 MHz	10 mV/m	-65.8 dBW/m^2
470 to 890 MHz	30 mV/m	-56.2 dBW/m^2
890 to 3000 MHz	1 mV/m	-85.8 dBW/m^2

Note: Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7 Ω (120π Ω).

Receiving Zone;

(iv) Stations located within 80 kilometers (50 miles) transmitting with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(3) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services NOAAR/E5X2, Boulder Laboratories, Boulder, CO 80303; telephone (303) 497-6548, in advance of filing their applications with the FCC.

(4) The FCC will not screen applications to determine whether advance consultation has taken place. However, such consultation may avoid the filing of objections from the Department of Commerce or institution of proceedings to modify the authorizations of stations that radiate signals with a field strength or power flux density at the site in excess of those specified herein.

(c) Federal Communications Commission protected field offices. The requirements of this paragraph are intended to minimize possible interference to FCC monitoring activities.

(1) Carriers planning to construct and operate a new or modified Public Mobile Services station at a permanent fixed location in the vicinity of an FCC protected field office are advised to give consideration, prior to filing applications, to the need to avoid interfering with the monitoring activities of that office. FCC protected field offices are listed in § 0.121 of this chapter.

(2) Applications for stations (except mobile stations) that could produce on any channel a direct wave fundamental field strength of greater than 10 mV/m (-65.8 dBW/m^2 power flux density assuming a free space characteristic impedance of 120π Ω) in the authorized bandwidth at the protected field office may be examined to determine the potential for interference with monitoring activities. After consideration of the effects of the predicted field strength of the proposed station, including the cumulative effects of the signal from the proposed station with other ambient radio field strength levels at the protected field office, the FCC may add a condition restricting radiation toward the protected field office to the station authorization.

(3) In the event that the calculated field strength exceeds 10 mV/m at the protected field office site, or if there is any question whether field strength levels might exceed that level, advance consultation with the FCC to discuss possible measures to avoid interference to monitoring activities should be considered. Prospective applicants may communicate with: Chief, Field Operations Bureau, Federal Communications Commission, Washington, DC 20554.

(4) Advance consultation is recommended for applicants that have no reliable data to indicate whether the field strength or power flux density figure indicated would be exceeded by their proposed radio facilities. In general, coordination is recommended for:

(i) Stations located within 2.4 kilometers (1.5 miles);

(ii) Stations located within 4.8 kilometers (3 miles) with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the protected field offices.

(iii) Stations located within 16 kilometers (10 miles) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the protected field office;

(iv) Stations located within 80 kilometers (50 miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the protected field office;

(5) Advance coordination for stations transmitting on channels above 1000 MHz is recommended only if the proposed station is in the vicinity of a protected field office designated as a satellite monitoring facility in § 0.121 of this chapter.

(6) The FCC will not screen applications to determine whether advance consultation has taken place. However, such consultation may serve to avoid the need for later modification of the authorizations of stations that interfere with monitoring activities at protected field offices.

§ 22.371 Disturbance of AM broadcast station antenna patterns.

Public Mobile Service licensees that construct or modify towers in the immediate vicinity of AM broadcast stations are responsible for measures necessary to correct disturbance of the AM station antenna pattern which causes operation outside of the radiation parameters specified by the FCC for the AM station, if the disturbance occurred as a result of such construction or modification.

(a) Non-directional AM stations. If tower construction or modification is planned within 1 kilometer (0.6 mile) of a non-directional AM broadcast station tower, the Public Mobile Service licensee must notify the licensee of the AM broadcast station in advance of the planned construction or modification. Measurements must be made to determine whether the construction or modification affected the AM station antenna pattern. The Public Mobile Service licensee is responsible for the installation and continued maintenance of any detuning apparatus necessary to restore proper non-directional performance of the AM station tower.

(b) Directional AM stations. If tower construction or modification is planned within 3 kilometers (1.9 miles) of a

directional AM broadcast station array, the Public Mobile Service licensee must notify the licensee of the AM broadcast station in advance of the planned construction or modification. Measurements must be made to determine whether the construction or modification affected the AM station antenna pattern. The Public Mobile Service licensee is responsible for the installation and continued maintenance of any detuning apparatus necessary to restore proper performance of the AM station array.

§ 22.373 Access to transmitters.

Unless otherwise provided in this part, the design and installation of transmitters in the Public Mobile Services must meet the requirements of this section.

(a) Transmitters and control points, other than those used with in-building radiation systems, must be installed such that they are readily accessible only to persons authorized by the licensee to operate or service them.

(b) Transmitters must be designed and installed such that any adjustments or controls that could cause the transmitter to deviate from its authorized operating parameters are readily accessible only to persons authorized by the licensee to make such adjustments.

(c) Transmitters (other than hand-carried or pack-carried mobile transmitters) and control points must be equipped with a means of indicating when the control circuitry has been put in a condition that should cause the transmitter to radiate.

(d) Transmitters must be designed such that they can be turned off independently of any remote control circuits.

(e) Transmitters used with in-building radiation systems must be installed such that, to the extent possible, they are readily accessible only to persons authorized by the licensee to access them.

(f) Transmitters used with in-building radiation systems must be designed such that, in the event an unauthorized person does gain access, that person can not cause the transmitter to deviate from its authorized operating parameters in such a way as to cause interference to other stations.

§ 22.377 Type-acceptance of transmitters.

Except as provided in paragraph (b) of this section, transmitters used in the Public Mobile services must be type-accepted for use in the services regulated under this part. Transmitters must be type-accepted when the station is ready for service, not necessarily at the time of filing an application.

(a) The FCC may list as type-accepted only transmitters that are capable of meeting all technical requirements of the rules governing the service in which they will operate. The procedure for obtaining type-acceptance is set forth in Part 2 of this chapter.

(b) Transmitters operating under a developmental authorization (see Subpart D) do not have to be type-accepted.

(c) Type-accepted transmitters are listed in the FCC's "Radio Equipment List," which is available for public inspection at the FCC in Washington, DC, and its field offices.

(d) In addition to the technical standards contained in this part, transmitters intended for operation in the Cellular Radiotelephone Service must be designed to comply with the technical requirements contained in the cellular system compatibility specification (see § 22.933) and the electronic serial number rule (see § 22.919).

§ 22.379 Replacement of equipment.

Licensees may replace any equipment in Public Mobile Service stations without applying for authorization or notifying the FCC, provided that:

(a) If a transmitter is replaced, the replacement transmitter must be type-accepted for use in the Public Mobile Services;

(b) The antenna structure must not become a hazard to air navigation and its height must not be not increased;

(c) The interference potential of the station must not be increased;

(d) The effective radiated power, emission type, antenna radiation pattern and center of radiation height above average terrain are not changed.

§ 22.381 Auxiliary test transmitters.

Auxiliary test transmitters may be used only for testing the performance of fixed receiving equipment located remotely from the control point. Auxiliary test transmitters may transmit only on channels designated for mobile transmitters.

§ 22.383 In-building radiation systems.

Licensees may install and operate in-building radiation systems without applying for authorization or notifying the FCC, provided that the locations of the in-building radiation systems are within the protected service area of the licensee's authorized transmitter(s) on the same channel or channel block.

Subpart D - Developmental Authorizations

§ 22.401 Description and purposes of developmental authorizations.

Communications common carriers may apply for, and the FCC may grant, authority to construct and operate one or more transmitters subject to the rules in this subpart and other limitations, waivers and/or conditions that may be prescribed. Authorizations granted on this basis are developmental authorizations. In general, the FCC grants developmental authorizations in situations and circumstances where it cannot reasonably be determined in advance whether a particular transmitter can be operated or a particular service can be provided without causing interference to the service of existing stations. For example, the FCC may grant developmental authorizations for:

(a) Field strength surveys to evaluate the technical suitability of antenna locations for stations in the Public Mobile Services;

(b) Experimentation leading to the potential development of a new Public Mobile Service or technology; or,

(c) Stations transmitting on channels in certain frequency ranges, to provide a trial period during which it can be individually determined whether such stations can operate without causing excessive interference to existing services.

§ 22.403 General limitations.

The provisions and requirements of this section are applicable to all developmental authorizations.

(a) Developmental authorizations are granted subject to the condition that they may be cancelled by the FCC at any time, upon notice to the licensee, and without the opportunity for a hearing.

(b) Except as otherwise indicated in this subpart, developmental authorizations normally terminate one year from the date of grant. The FCC may, however, specify a different term.

(c) Stations operating under developmental authorizations must not interfere with the services of regularly authorized stations.

(d) A grant of a developmental authorization does not provide any assurance that the FCC will grant an application for regular authorization to operate the same transmitter(s), even if operation during the developmental period has not caused interference and/or the developmental program is successful.

§ 22.409 Developmental authorization for a new Public Mobile Service or technology.

The FCC may grant applications for developmental authority to construct and operate transmitters for the purpose of developing a new Public Mobile Service or a new technology not regularly authorized under this part, subject to the requirements of this section. Such applications may request the use of any portion of the spectrum allocated for Public Mobile Services in the Table of Frequency Allocations contained in Part 2 of this chapter, regardless of whether that spectrum is regularly available under this part. Requests to use any portion of the spectrum for a service or purpose other than that indicated in the Table of Frequency Allocations in Part 2 of this chapter may be made only in accordance with the provisions of Part 5 of this chapter.

(a) Preliminary determination. The FCC will make a preliminary determination with respect to the factors set forth in paragraphs (a)(1) through (a)(3) of this section before acting on an application for developmental authority pursuant to this section. These factors are:

(1) That the public interest, convenience or necessity warrants consideration of the establishment of the proposed service or technology;

(2) That the proposal appears to have potential value to the public that could warrant the establishment of the new service or technology;

(3) That some operational data should be developed for consideration in any rule making proceeding which may be initiated to establish such service or technology.

(b) Petition required. Applications for developmental authorizations pursuant to this section must be accompanied by a petition for rule making requesting the FCC to amend its rules as may be necessary to provide for the establishment of the proposed service or technology.

(c) Application requirements. Authorizations for developmental authority pursuant to this section will be issued only upon a showing that the applicant has a definite program of research and development which has reasonable promise of substantial contribution to the services authorized by this part. The application must contain an exhibit demonstrating the applicant's technical qualifications to conduct the research and development program, including a description of the nature and extent of engineering facilities that the applicant has available for such purpose. Additionally, the FCC may, in its discretion, require a showing of financial qualification.

(d) Communication service for hire prohibited. Stations authorized under developmental authorizations granted pursuant to this section must not be used to provide communication

service for hire, unless otherwise specifically authorized by the FCC.

(e) Adherence to program. Carriers granted developmental authorization pursuant to this section must substantially adhere to the program of research and development described in their application for developmental authorization, unless the FCC directs otherwise.

(f) Report requirements. Upon completion of the program of research and development, or upon the expiration of the developmental authorization under which such program was permitted, or at such times during the term of the station authorization as the FCC may deem necessary to evaluate the progress of the developmental program, the licensee shall submit a comprehensive report, containing:

(1) A description of the progress of the program and a detailed analysis of any result obtained;

(2) Copies of any publications produced by the program;

(3) A listing of any patents applied for, including copies of any patents issued;

(4) Copies of any marketing surveys or other measures of potential public demand for the new service;

(5) A description of the carrier's experiences with operational aspects of the program including -

(i) The duration of transmissions on each channel or frequency range and the technical parameters of such transmissions; and,

(ii) Any interference complaints received as a result of operation and how these complaints were investigated and resolved.

(g) Confidentiality. Normally, applications and developmental reports are a part of the FCC's public records. However, an applicant or licensee may request that the FCC withhold from public records specific exhibits, reports and other material associated with a developmental authorization.

(h) Renewal. Expiring developmental authorizations issued pursuant to this section may be renewed if the carrier -

(1) Shows that further progress in the program of research and development requires additional time to operate under developmental authorization;

(2) Complied with the reporting requirements of paragraph (e) of this section; and,

(3) Immediately resolved to the FCC's satisfaction all complaints of interference caused by the station operating under developmental authority.

§ 22.411 Developmental authorization of 43 MHz paging transmitters.

Because of the potential for interference to the intermediate frequency stages of receivers in broadcast television sets and video recorders, 43 MHz paging channels are assigned only under developmental authorizations subject to the requirements of this section, except as provided in paragraph (d) of this section.

(a) Carrier responsibility. Carriers so authorized shall operate the 43 MHz paging service under developmental authority for a period of two years. During the two year developmental period, carriers must resolve any broadcast television receiver intermediate frequency interference problems that may occur as a result of operation of the 43 MHz paging transmitter(s). Carriers shall inform subscribers receiving service on the channels assigned under developmental authority during the developmental period that this service could be terminated by the FCC on short notice if such action were to become necessary to eliminate interference. Carriers shall notify the appropriate FCC Field Office, in advance, of the date on which service to subscribers is to begin.

(b) Periodic surveys. To determine the extent of any interference to broadcast television receivers resulting from operation of 43 MHz paging stations authorized pursuant to this section, carriers shall conduct semi-annual surveys during the first two years of operation. The first such survey is to begin on the date when service to subscribers commences. For each survey, the carrier shall contact at least 25 television viewers to determine whether they have experienced interference.

(1) The carrier shall contact viewers located throughout the geographic area encompassed by a 3 kilometer (2 mile) radius of the 43 MHz paging transmitter antenna site. The carrier must not attempt to obtain a misleading survey by contacting only viewers less likely to be experiencing interference. For example, the carrier must not contact only the viewers located most distant from the paging transmitter antenna site. Instead, the carrier shall contact viewers located near the paging transmitter antenna site.

(2) The carrier shall not, in subsequent surveys, contact viewers who were contacted in a previous survey; provided that, in the event that all of the viewers within 3 kilometers (2 miles) have been contacted, viewers located near the paging transmitter antenna site shall be contacted again.

(c) Periodic reports. Following each survey, the carrier shall submit to the FCC a written report disclosing and evaluating the extent of any interference. These reports must include:

(1) The number of the report (1 to 4);

(2) The station call sign;

(3) The file number of the application that resulted in the developmental authorization;

(4) An exact description of the transmitter location(s);

(5) The date(s) and time of day when the survey was conducted;

(6) The survey method used (e.g. telephone, on-site, etc.);

(7) The names, addresses and telephone numbers of the viewers contacted;

(8) If interference resulted from operation of the 43 MHz paging station, a summary of how the interference problem was resolved;

(9) The names and telephone numbers of any technical personnel consulted and/or employed to resolve interference problems.

(d) Exceptions. The FCC may grant a regular authorization in the Paging and Radiotelephone Service for a 43 MHz paging station in the following circumstances:

(1) After the two-year developmental period, provided that broadcast TV interference complaints have been resolved by the carrier in a satisfactory manner. Licensees that hold a developmental authorization for a 43 MHz paging station and wish to request a regular authorization must file an application (FCC Form 401) prior to the expiration of the developmental period.

(2) In the case of the assignment of or a transfer of control of a regular authorization of a 43 MHz paging station in the Paging and Radiotelephone Service, provided that the station has been in continuous operation providing service with no substantial interruptions.

§ 22.413 Developmental authorization of 72-76 MHz fixed transmitters.

Because of the potential for interference with the reception by broadcast television sets and video recorders of full service TV stations transmitting on TV Channels 4 and 5, 72-76 MHz channels are assigned for use within 16 kilometers (10 miles) of the antenna of any full service TV station transmitting on TV Channel 4 or 5 only under developmental authorizations subject to the requirements of this section, except as provided in paragraph (b) of this section.

(a) Carrier responsibility. Carriers so authorized shall operate the 72-76 MHz fixed station under developmental authority for a period of at least six months. During the developmental period, carriers must resolve any broadcast television receiver interference problems that may occur as a result of operation of the 72-76 MHz transmitter(s).

(b) Exceptions. The FCC may grant a regular authorization in the Paging and Radiotelephone Service for a 72-76 MHz fixed station under the following circumstances:

(1) After six months of operation under developmental authorization, and provided that broadcast TV interference complaints have been resolved by the carrier in a satisfactory manner, the FCC may grant a regular authorization. Licensees that hold a developmental authorization for a 72-76 MHz fixed station and wish to request a regular authorization must file an application (FCC Form 401) prior to the expiration of the developmental authorization.

(2) In the case of the assignment of or a transfer of control of a regular authorization of a 72-76 MHz fixed station in the Paging and Radiotelephone Service, the FCC may grant such assignment or consent to such transfer of control provided that the station has been in continuous operation providing service with no substantial interruptions.

(3) If a proposed 72-76 MHz fixed transmitter antenna is to be located within 50 meters (164 feet) of the antenna of the full service TV station transmitting on TV Channel 4 or 5, the FCC may grant a regular authorization instead of a developmental authorization.

§ 22.415 Developmental authorization of 928-960 MHz fixed transmitters.

Channels in the 928-929 MHz and 952-960 MHz ranges may be assigned under developmental authorizations to fixed transmitters in point-to-multipoint systems at locations that are short-spaced (i.e. do not meet the 113 kilometer (70 mile) separation requirement of § 22.625), subject to the requirements of this section.

(a) Carrier responsibility. Applications for developmental authorizations pursuant to this section must contain an engineering analysis that shows that no interference will be caused or received. Carriers so authorized shall operate the short-spaced transmitter for a period of one year.

(b) Exceptions. The FCC may grant a regular authorization in the Paging and Radiotelephone Service for a short-spaced fixed station under the following circumstances:

(1) After one year of operation under developmental authorization, and provided that no interference has been caused, the FCC may grant a regular authorization. Licensees that hold a developmental authorization and wish to request a regular authorization must file an application (FCC Form 401) prior to the expiration of the developmental authorization.

(2) In the case of the assignment of or a transfer of control

of a regular authorization of a short-spaced fixed station in the Paging and Radiotelephone Service, the FCC may grant such assignment or consent to such transfer of control provided that the station has been in continuous operation providing service and no interference has been caused.

§ 22.417 Developmental authorization of meteor burst systems.

Because of the potential for interference to other 42-46 MHz operations, central office and rural subscriber stations in Alaska are authorized to use meteor burst propagation modes to provide rural radiotelephone service only under developmental authorizations subject to the requirements of this section, except as provided in paragraph (b) of this section. See also §§ 22.725(c) and 22.729.

(a) Carrier responsibility. Carriers and subscribers so authorized shall operate the station under developmental authority for a period of at least one year.

(b) Exceptions. The FCC may grant a regular authorization in the Rural Radiotelephone Service for a central office or rural subscriber to use meteor burst propagation modes to provide rural radiotelephone service under the following circumstances:

(1) After one year of operation under developmental authorization, and provided that no interference has been caused to other operations, the FCC may grant a regular authorization. Licensees that hold a developmental authorization to use meteor burst propagation modes to provide rural radiotelephone service and wish to request a regular authorization must file an application (FCC Form 401) prior to the expiration of the developmental authorization.

(2) In the case of the assignment of or a transfer of control of a regular authorization of a central office or rural subscriber station authorizing the use of meteor burst propagation modes in the Rural Radiotelephone Service, the FCC may grant such assignment or consent to such transfer of control provided that the station has been in operation providing service with no substantial interruptions.

Subpart E - Paging and Radiotelephone Service

§ 22.501 Scope.

The rules in this subpart govern the licensing and operation of public mobile paging and radiotelephone stations. The licensing and operation of these stations are also subject to rules elsewhere in this part that apply generally to the Public Mobile Services. However, in case of conflict, the rules in this subpart govern.

§ 22.507 Number of transmitters per station.

This section concerns the number of transmitters licensed under each station authorization in the Paging and Radiotelephone Service. Each station must have at least one transmitter. There is no limit to the number of transmitters that a station may comprise. However, transmitters within a station should be operationally related and/or should serve the same general geographical area. Operationally related transmitters are those that operate together as a system (e.g. trunked systems, simulcast systems), rather than independently. Furthermore, the FCC may split wide-area systems into two or more stations for administrative convenience. Except for nationwide paging and other operationally related transmitters, transmitters that are widely separated geographically are not licensed under a single authorization. The FCC may consolidate separately authorized stations upon request (FCC Form 401) of the licensee, if appropriate under this section.

NOTE to § 22.507: Notwithstanding the provisions of § 22.507, until further notice there can be no more than 99 transmitters per station.

§ 22.511 Construction period for the Paging and Radiotelephone Service.

The construction period for stations in the Paging and Radiotelephone Service is one year.

§ 22.515 Permissible communications paths.

Mobile stations may communicate only with and through base stations. Base stations may communicate only with mobile stations and receivers on land or surface vessels.

§ 22.529 Application requirements for the Paging and Radiotelephone Service.

In addition to information required by Subparts B and D of this part, applications for authorization to operate a transmitter in the Paging and Radiotelephone Service must contain the applicable supplementary information described in this section.

(a) Administrative information. The following information is required by FCC Form 401, Schedule B.

(1) The number of transmitter sites for which authorization is requested.

(2) The call sign(s) of other facilities in the same area that are ultimately controlled by the real party in interest to the application.

(b) Technical information. The following information is required by FCC Form 401, Schedule B.

(1) Location description; city; county; state; geographical coordinates correct to ±1 second, the datum used (NAD 27 or NAD 83), site elevation above mean sea level, proximity to adjacent market boundaries and international borders;

(2) Antenna manufacturer, model number and type, antenna height to tip above ground level, the height of the center of radiation of the antenna above the average terrain, the height of the antenna center of radiation above the average elevation of the terrain along each of the 8 cardinal radials, antenna gain in the maximum lobe, the beamwidth of the maximum lobe of the antenna, a polar plot of the horizontal gain pattern of the antenna, the electric field polarization of the wave emitted by the antenna when installed as proposed;

(3) The center frequency of each channel requested, the maximum effective radiated power, the effective radiated power in each of the cardinal radial directions, any non-standard emission types to be used, including bandwidth and modulation type, the transmitter classification (e.g. base, fixed, mobile), and the locations, if any, of any points of communication.

ONE-WAY PAGING OPERATION

§ 22.531 Channels for one-way paging operation.

The following channels are allocated for assignment to base transmitters that provide one-way public paging service. Unless otherwise indicated, all channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

Low VHF channels

35.20	35.46	43.20	43.46
35.22	35.50	43.22	43.50
35.24	35.54	43.24	43.54
35.26	35.56	43.26	43.56
35.30	35.58	43.30	43.58
35.34	35.60	43.34	43.60
35.38	35.62	43.38	43.62
35.42	35.66	43.42	43.66

High VHF channels

152.24	152.84	158.10	158.70

UHF channels

931.0125	931.2625	931.5125	931.7625
931.0375	931.2875	931.5375	931.7875
931.0625	931.3125	931.5625	931.8125
931.0875	931.3375	931.5875	931.8375
931.1125	931.3625	931.6125	931.8625
931.1375	931.3875	931.6375	931.8875
931.1625	931.4125	931.6625	931.9125
931.1875	931.4375	931.6875	931.9375
931.2125	931.4625	931.7125	931.9625
931.2375	931.4875	931.7375	931.9875

(a) The 43 MHz channels may be assigned under developmental authorizations, pursuant to the requirements of § 22.411.

(b) Channels 931.8875, 931.9125, and 931.9375 MHz may be assigned only to transmitters providing nationwide network paging service.

(c) Upon application (FCC Form 401), common carriers may be authorized to provide one-way paging service using the leased subcarrier facilities of broadcast stations licensed under Part 73 of this chapter.

(d) Occasionally in case law and other formal and informal documents, the low VHF channels have been referred to as "lowband" channels, and the high VHF channels have been referred to as "guardband" channels.

(e) Pursuant to the U.S.-Canada Interim Coordination Considerations for 929-932 MHz, as amended, only the following UHF channels may be assigned in the continental United States North of Line A or in the State of Alaska East of Line C, within the indicated longitudes:

(1) From longitude W.73° to longitude W.75° and from longitude W.78° to longitude W.81°:

931.0125	931.1125	931.1875	931.2625
931.0375	931.1375	931.2125	931.8625
931.0625	931.1625	931.2375	

(2) From longitude W.81° to longitude W.85°:

931.0125	931.2125	931.3875	931.5875
931.0375	931.2375	931.4125	931.6125
931.0625	931.2625	931.4625	931.6375
931.1125	931.2875	931.4875	931.8625
931.1375	931.3125	931.5125	
931.1625	931.3375	931.5375	
931.1875	931.3625	931.5625	

(3) Longitudes other than specified in paragraphs (e)(1) and (e)(2) of this section:

931.0125	931.1625	931.2875	931.4125
931.0375	931.1875	931.3125	931.4625
931.0625	931.2125	931.3375	931.8625
931.1125	931.2375	931.3625	
931.1375	931.2625	931.3875	

(4) At any longitude, with authorization condition requiring coordinated, shared use and equal access by licensees in both countries:

931.4375	931.8875	931.9125	931.9375

§ 22.535 Effective radiated power limits.

The effective radiated power (ERP) of base transmitters operating on the channels listed in § 22.531 must not exceed the limits in this section.

(a) Maximum ERP. The ERP must not exceed the applicable limits in this paragraph under any circumstances.

Frequency Range (MHz)	Maximum ERP (Watts)
35-36	600
43-44	500
152-159	1400
931-932	3500

(b) Basic power limit. Except as provided in paragraph (d) of this section, the ERP of transmitters on the VHF channels must not exceed 500 Watts.

(c) Height-power limit. Except as provided in paragraph (d) of this section, the ERP of transmitters on the VHF channels must not exceed the amount that would result in an average distance to the service contour of 32.2 kilometers (20 miles). The average distance to the service contour is calculated by taking the arithmetic mean of the distances determined using the procedures specified in § 22.537 for the eight cardinal radial directions, excluding cardinal radial directions for which 90% or more of the distance so calculated is over water.

(d) Encompassed interfering contour areas. Transmitters are exempt from the basic power and height-power limits of this section if the area within their interfering contours is totally encompassed by the interfering contours of operating co-channel base transmitters controlled by the same licensee. For the purpose of this paragraph, operating transmitters are authorized transmitters that are providing service to subscribers.

(e) Adjacent channel protection. The ERP of transmitters must not exceed 500 Watts if they:

(1) Transmit on a channel in the 152-159 MHz frequency range and are located less than 5 kilometers (3.1 miles) from any station licensed in the Private Radio Services that receives on an adjacent channel; or,

(2) Transmit on channel 158.10 or 158.70 MHz and are located less than 5 kilometers (3.1 miles) from any station licensed in the Public Mobile Services that receives on either of the following adjacent channels: 158.07 MHz or 158.67 MHz.

§ 22.537 Technical channel assignment criteria.

The rules in this section establish technical assignment criteria for the channels listed in § 22.531. These criteria permit channel assignments to be made in a manner such that reception by public paging receivers of signals from base transmitters, within the service area of such base transmitters, is protected from interference caused by the operation of independent co-channel base transmitters.

(a) Contour overlap. The FCC may grant an application requesting assignment of a channel to a proposed base transmitter only if:

(1) The interfering contour of the proposed transmitter does not overlap the service contour of any protected co-channel transmitter controlled by a carrier other than the applicant, unless that carrier has agreed in writing to accept any interference that may result from operation of the proposed transmitter; and,

(2) The service contour of the proposed transmitter does not overlap the interfering contour of any protected co-channel transmitter controlled by a carrier other than the applicant, unless the applicant agrees to accept any interference that may result from operation of the protected co-channel transmitter; and,

(3) The area and/or population to which service would be provided by the proposed transmitter is substantial, and service gained would exceed that lost as a result of agreements to accept interference.

(b) Protected transmitter. For the purposes of this section, protected transmitters are authorized transmitters for which there is a current FCC public record and transmitters proposed in prior-filed pending applications.

(c) VHF service contour. For paging stations transmitting on the VHF channels, the distance from the transmitting antenna to the service contour along each cardinal radial is calculated as follows:

$$d = 1.243 \times h^{0.40} \times p^{0.20}$$

where d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

(1) Whenever the actual HAAT is less than 30 meters (98 feet), 30 must be used as the value for h in the above formula.

(2) The value used for p in the above formula must not be less than 27 dB less than the maximum ERP in any direction or 0.1 Watt, whichever is more.

(3) The distance from the transmitting antenna to the service contour along any radial other than the eight cardinal radials is routinely calculated by linear interpolation of distance as a function of angle. However, in resolving petitions to deny, the FCC may calculate the distance to the service contour using the formula in paragraph (c) of this section with actual HAAT and ERP data for the inter-station radial and additional radials above and below the inter-station radial at 2.5° intervals.

(d) VHF interfering contour. For paging stations transmitting on the VHF channels, the distance from the

transmitting antenna to the interfering contour along each cardinal radial is calculated as follows:

$$d = 6.509 \times h^{0.28} \times p^{0.17}$$

where d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

(1) Whenever the actual HAAT is less than 30 meters (98 feet), 30 must be used as the value for h in the above formula.

(2) The value used for p in the above formula must not be less than 27 dB less than the maximum ERP in any direction or 0.1 Watt, whichever is more.

(3) The distance from the transmitting antenna to the interfering contour along any radial other than the eight cardinal radials is routinely calculated by linear interpolation of distance as a function of angle. In resolving petitions to deny, however, the FCC may calculate the distance to the interfering contour using the formula in paragraph (d) of this section with actual HAAT and ERP data for the inter-station radial and additional radials above and below the inter-station radial at 2.5° intervals.

(e) 931 MHz service contour. For paging stations transmitting on the 931 MHz channels, the service contour is a circle, centered on the transmitting antenna, with a radius determined from Table E-1.

(f) 931 MHz interfering contour. For paging stations transmitting on the 931 MHz channels, the interfering contour is a circle, centered on the transmitting antenna, with a radius determined from Table E-2.

(g) In-building radiation systems. The locations of in-building radiation systems must be within the service contour(s) of the licensee's authorized transmitter(s) on the same channel. In-building radiation systems are not protected facilities, and therefore do not have service or interfering contours.

§ 22.539 Additional channel policies.

The rules in this section govern the processing of applications for a paging channel when the applicant has applied for or been granted an authorization for other paging channels in the same geographic area. This section applies to

Table E-1 - 931 MHz Paging Service Radii

Service Radius km (miles)	Effective Radiated Power (Watts)					
Antenna HAAT meters (feet)	0-125	126-250	251-500	501-1000	1001-1860	1861-3500
0-177 (0-581)	32.2 (20)	32.2 (20)	32.2 (20)	32.2 (20)	32.2 (20)	32.2 (20)
178-305 (582-1001)	32.2 (20)	32.2 (20)	32.2 (20)	32.2 (20)	37.0 (23)	41.8 (26)
306-427 (1002-1401)	32.2 (20)	32.2 (20)	37.0 (23)	41.8 (26)	56.3 (35)	56.3 (35)
428-610 (1402-2001)	32.2 (20)	37.0 (23)	41.8 (26)	56.3 (35)	56.3 (35)	56.3 (35)
611-861 (2002-2825)	37.0 (23)	41.8 (26)	41.8 (26)	56.3 (35)	83.7 (52)	83.7 (52)
862-1219 (2826-3999)	41.8 (26)	56.3 (35)	56.3 (35)	83.7 (52)	83.7 (52)	83.7 (52)
1220+ (4000+)	56.3 (35)	56.3 (35)	83.7 (52)	83.7 (52)	83.7 (52)	83.7 (52)

Table E-2 - 931 MHz Paging Interfering Radii

Interfering Radius km (miles)	Effective Radiated Power (Watts)					
Antenna HAAT meters (feet)	0-125	126-250	251-500	501-1000	1001-1860	1861-3500
0-177 (0-581)	80.5 (50)	80.5 (50)	80.5 (50)	80.5 (50)	80.5 (50)	80.5 (50)
178-305 (582-1001)	80.5 (50)	80.5 (50)	80.5 (50)	80.5 (50)	88.5 (55)	96.6 (60)
306-427 (1002-1401)	80.5 (50)	80.5 (50)	88.5 (55)	96.6 (60)	130.4 (81)	130.4 (81)
428-610 (1402-2001)	80.5 (50)	88.5 (55)	96.6 (60)	130.4 (81)	130.4 (81)	130.4 (81)
611-861 (2002-2825)	88.5 (55)	96.6 (60)	96.6 (60)	130.4 (81)	191.5 (119)	191.5 (119)
862-1219 (2826-3999)	96.6 (60)	130.4 (81)	130.4 (81)	191.5 (119)	191.5 (119)	191.5 (119)
1220+ (4000+)	130.4 (81)	130.4 (81)	191.5 (119)	191.5 (119)	191.5 (119)	191.5 (119)

applications proposing to use the channels listed in § 22.531, excluding the nationwide network paging channels and broadcast station subcarriers, or the channels listed in § 22.561, where the application proposes to use those channels to provide paging service only. The general policy of the FCC is to assign one paging channel in an area to a carrier per application cycle. That is, a carrier must apply for one paging channel, receive the authorization, construct the station, provide service to subscribers, and notify the FCC of commencement of service to subscribers (FCC Form 489) before applying for an additional paging channel in that area.

(a) VHF transmitters in same area. Any transmitter on any VHF channel listed in § 22.531 is considered to be in the same geographic area as another transmitter on any other VHF channel listed in § 22.531 if:

(1) One transmitter location is within the service area of the other transmitter; or,

(2) The area within the overlap of the service contours of the two transmitters constitutes 50 percent or more of the service area of either of the transmitters.

(b) 931 MHz transmitters in same area. Any transmitter on any 931 MHz channel is considered to be in the same geographic area as another transmitter on any channel listed in § 22.531 if it is located less than 64.4 kilometers (40 miles) from that transmitter. Likewise, any transmitter on any channel listed in § 22.531 is considered to be in the same geographic area as another transmitter on any 931 MHz channel if it is located less than 64.4 kilometers (40 miles) from that transmitter.

(c) Initial channel. The FCC will not assign more than one channel for new paging stations. Paging stations are considered to be new if there are no authorized transmitters on any channel listed in § 22.531 controlled by the applicant in the same geographic area.

(d) Additional channel. Applications for transmitters to be located in the same geographic area as an authorized station controlled by the applicant, but to operate on a different channel, are considered as requesting an additional channel for the authorized station, unless paragraph (e) of this section applies.

(e) Additional transmitters on same channel. Notwithstanding other provisions of this section, applications for transmitters to be located in the same geographic area as an authorized station controlled by the applicant, and to operate on the same paging channel, are not considered to be requests for an additional paging channel.

(f) Amendment of pending application. If the FCC receives and accepts for filing an application for a transmitter to be located in the same geographic area as a transmitter proposed in a pending application previously filed by the applicant, but on a different channel, the subsequent application is considered as a major amendment to change the technical proposal of the prior application, unless paragraph (e) applies. The filing date of any application so amended is the date the FCC received the subsequent application.

(g) Dismissal of premature applications for additional channel. If the FCC receives an application requesting an additional channel for an authorized station prior to receiving notification that the station is providing service to subscribers on the authorized channel(s), the FCC may dismiss that application without prejudice in accordance with § 22.128.

§ 22.541 Procedures for mutually exclusive 931 MHz paging applications.

Mutually exclusive 931 MHz applications are processed in accordance with the rules in this section.

(a) Filing groups. Pending mutually exclusive applications are processed in filing groups. Mutually exclusive applications in a filing group are given concurrent consideration. The FCC may dismiss as defective (pursuant to § 22.128) any mutually exclusive application(s) whose filing date is outside of the date range for inclusion in the filing group. The types of filing groups used in day-to-day application processing are specified in paragraph (b)(3) of this section. A filing group is one of the following types:

(1) Renewal filing group. A renewal filing group comprises a timely-filed application for renewal of an authorization and all timely-filed mutually exclusive competing applications.

(2) Same-day filing group. A same-day filing group comprises all mutually exclusive applications whose filing date is the same day, which is normally the filing date of the first-filed application(s).

(3) Thirty-day notice and cut-off filing group. A thirty-day notice and cut-off filing group comprises mutually exclusive applications whose filing date is no later than 30 days after the date of the Public Notice listing the first-filed application(s) (according to the filing dates) as acceptable for filing.

(4) Window filing group. A window filing group comprises mutually exclusive applications whose filing date is within an announced filing window. An announced filing window is a period of time between and including two specific dates, which are the first and last dates on which applications (or amendments) for a particular purpose may be accepted for filing. In the case of a one-day filing window, the two dates are the same. The dates are made known to the public in advance.

(b) Procedures. Generally, the FCC may grant one application in a filing group of mutually exclusive applications and dismiss other application(s) in the filing group that are excluded by that grant, pursuant to § 22.128.

(1) Selection methods. In selecting the application to grant, the FCC may use competitive bidding or comparative hearings, depending on the type of applications involved.

(2) Dismissal of applications. The FCC may dismiss any application in a filing group that is defective or otherwise subject to dismissal under § 22.128, either before or after employing selection procedures.

(3) Type of filing group used. Except as otherwise provided in this part, the type of filing group used in processing of two or more mutually exclusive applications depends on the purpose(s) of the applications.

(i) If one of the mutually exclusive applications is a timely-filed application for renewal of an authorization, a renewal filing group is used.

(ii) If any mutually exclusive application filed on the earliest filing date is an application for modification and none of the mutually exclusive applications is a timely-filed application for renewal, a same-day filing group is used.

(iii) If all of the mutually exclusive applications filed on the earliest filing date are applications for initial authorization, a thirty-day notice and cut-off filing group is used.

(4) Disposition. If there is only one application in any type of filing group, the FCC may grant that application and dismiss without prejudice any applications excluded by that grant (i.e. not in the filing group). If there is more than one mutually exclusive application in a filing group, the FCC disposes of these applications as follows:

(i) Applications in a renewal filing group. All mutually exclusive applications in a renewal filing group are designated for comparative consideration in a hearing.

(ii) Applications in a thirty-day notice and cut-off filing group.

(A) If all of the mutually exclusive applications in a thirty-day notice and cut-off filing group are applications for initial authorization, the FCC administers competitive bidding procedures in accordance with Subpart Q of Part 1 of this

chapter. After such procedures, the application of the successful bidder may be granted and the other applications may be dismissed without prejudice.

(B) If any of the mutually exclusive applications in a thirty-day notice and cut-off filing group is an application for modification, the FCC may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the FCC may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes all of the applications in the filing group.

(iii) Applications in a same-day filing group. If there are two or more mutually exclusive applications in a same-day filing group, the FCC may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the FCC may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes all of the applications in the filing group.

(iv) Applications in a window filing group. Applications in a window filing group are processed in accordance with the procedures for a thirty-day notice and cut-off filing group in paragraph (b)(4)(ii) of this section.

(c) Terminology. For the purposes of this section, terms have the following meanings:

(1) The "filing date" of an application is the date on which that application was received in a condition acceptable for filing or the date on which the most recently filed major amendment to that application was received, whichever is later, excluding major amendments in the following circumstances:

(i) The major amendment reflects only a change in ownership or control found by the FCC to be in the public interest; or,

(ii) The major amendment as received is defective or otherwise found unacceptable for filing.

(2) An "application for initial authorization" is:

(i) Any application requesting an authorization for a new station;

(ii) Any application requesting authorization for an existing station to operate on an additional channel.

(iii) Any application requesting authorization for a new transmitter at a location more than 2 kilometers (1.2 miles) from any existing transmitters of the applicant licensee on the requested channel.

(3) An "application for modification" is any application other than an application for initial authorization or renewal.

§ 22.551 Nationwide network paging service.

The rules in this section govern the application for and provision of nationwide network paging service on the channels reserved specifically for such service in § 22.531(b).

(a) Nationwide network organizers. If and when a nationwide network paging channel becomes available for assignment, the FCC will issue a Public Notice inviting applications from carriers seeking to organize a nationwide network paging service. The Public Notice will provide complete details regarding application requirements and procedures.

(c) Affiliated local carriers. Parties seeking to become affiliated local carriers in a nationwide network paging service must have specific completed contracts with the network organizer with which they are proposing to affiliate. Applications may contain a letter, in lieu of the contracts, indicating that the applicant has a completed contract with the organizer.

(d) Liability for technical operation. Nationwide network organizers and affiliated local carriers are jointly and severally liable for the technical operation of the local network stations.

§ 22.559 One-way paging application requirements.

In addition to information required by Subparts B and D and § 22.529, applications for authorization to operate a paging transmitter on the channels listed in § 22.531 must contain the applicable supplementary information described in this section.

(a) Interference exhibit. Except as provided in paragraph (b) of this section, an exhibit demonstrating compliance with § 22.537 with regard to protected transmitters is required for applications to operate a transmitter on the VHF channels. This exhibit must:

(1) Identify each protected transmitter located within 109 kilometers (68 miles) of the proposed transmitter in directions in which the distance to the interfering contour is 76.5 kilometers (47.5 miles) or less, and within 178 kilometers (111 miles) of the proposed transmitter in directions in which the distance to the interfering contour exceeds 76.5 kilometers (47.5 miles).

(2) For each protected transmitter identified, show the results of distance calculations indicating that there would be no overlap of service and interfering contours, or alternatively, indicate that the licensee of or applicant for the protected transmitter and/or the applicant, as required, have agreed in writing to accept any interference resulting from operation of the proposed transmitter.

(b) Encompassment exhibit. An exhibit showing that the area within the interfering contour of the proposed transmitter would be totally encompassed by interfering contours of operating co-channel base transmitters controlled by the applicant is required for applications to operate a transmitter with ERP exceeding the basic power and height-power limits of § 22.535. For VHF transmitters, this encompassment exhibit may substitute for the interference exhibit required in paragraph (a) of this section.

ONE-WAY OR TWO-WAY MOBILE OPERATION

§ 22.561 Channels for one-way or two-way mobile operation.

The following channels are allocated for paired assignment to transmitters that provide (or support other transmitters that provide) one-way or two-way public land mobile service. These channels may be assigned for use by mobile or base transmitters as indicated, and to fixed transmitters (including control, repeater or other fixed transmitters). The mobile channels may also be assigned for use by base or fixed transmitters under certain circumstances (see § 22.567(h)). Unless otherwise indicated, all channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

VHF channels

base	mobile	base	mobile
152.03	158.49	152.57	157.83
152.06	158.52	152.60	157.86
152.09	158.55	152.63	157.89
152.12	158.58	152.66	157.92
152.15	158.61	152.69	157.95
152.18	158.64	152.72	157.98
152.21	158.67	152.75	158.01
152.51	157.77	152.78	158.04
152.54	157.80	152.81	158.07

UHF channels

base	mobile	base	mobile
454.025	459.025	454.350	459.350
454.050	459.050	454.375	459.375
454.075	459.075	454.400	459.400
454.100	459.100	454.425	459.425
454.125	459.125	454.450	459.450
454.150	459.150	454.475	459.475
454.175	459.175	454.500	459.500
454.200	459.200	454.525	459.525
454.225	459.225	454.550	459.550
454.250	459.250	454.575	459.575
454.275	459.275	454.600	459.600
454.300	459.300	454.625	459.625
454.325	459.325	454.650	459.650

§ 22.563 Provision of rural radiotelephone service upon request.

Channels in the frequency ranges 152.03-152.81, 157.77-158.67, 454.025-454.650 and 459.025-459.650 MHz, inclusive, are also allocated for assignment in the Rural Radiotelephone Service. Stations in the Paging and Radiotelephone Service that provide two-way public mobile service on these channels must also provide rural radiotelephone service upon request from a subscriber.

§ 22.565 Transmitting power limits.

The transmitting power of base, mobile and fixed transmitters operating on the channels listed in § 22.561 must not exceed the limits in this section.

(a) Maximum ERP. The effective radiated power (ERP) of base and fixed transmitters must not exceed the applicable limits in this paragraph under any circumstances.

Frequency Range (MHz)	Maximum ERP (Watts)
152-153	1400
157-159	150
454-455	3500
459-460	150

(b) Basic power limit. Except as provided in paragraph (d) of this section, the ERP of base transmitters must not exceed 500 Watts.

(c) Height-power limits. Except as provided in paragraph (d) of this section, the ERP of base transmitters must not exceed the amount that would result in an average distance to the service contour of 41.6 kilometers (26 miles) for VHF channels or 30.7 kilometers (19 miles) for UHF channels. The average distance to the service contour is calculated by taking the arithmetic mean of the distances determined using the procedures specified in § 22.567 for the eight cardinal radial directions, excluding cardinal radial directions for which 90% or more of the distance so calculated is over water.

(d) Encompassed interfering contour areas. Base transmitters are exempt from the basic power and height-power limits of this section if the area within their interfering contours is totally encompassed by the interfering contours of operating co-channel base transmitters controlled by the same licensee. For the purpose of this paragraph, operating transmitters are authorized transmitters that are providing service to subscribers.

(e) Adjacent channel protection. The ERP of base and fixed transmitters must not exceed 500 Watts if they transmit on channel 454.025 MHz and are located less than 7 kilometers (4.3 miles) from any Private Radio Services station receiving on adjacent channel 454.0000 MHz.

(f) Mobile transmitters. The transmitter output power of mobile transmitters must not exceed 60 watts.

(g) Other transmitters. The ERP of dispatch and auxiliary test transmitters must not exceed 100 watts.

§ 22.567 Technical channel assignment criteria.

The rules in this section establish technical assignment criteria for the channels listed in § 22.561. The criteria in paragraphs (a) through (f) of this section permit channel assignments to be made in a manner such that reception by public mobile receivers of signals from base transmitters, within the service area of such base transmitters, is protected from interference caused by the operation of independent co-channel base and fixed transmitters in the Paging and Radiotelephone Service and central office stations, including Basic Exchange Telephone Radio Systems (BETRS), in the Rural Radiotelephone Service. Additional criteria in paragraph (g) of this section permit channel assignments to be made in a manner such that BETRS communications are protected from interference caused by the operation of independent co-channel base and fixed transmitters in the Paging and Radiotelephone Service and other central office stations in the Rural Radiotelephone Service. Separate criteria in paragraph (h) of this section apply only to assignment of the channels designated in § 22.561 as mobile channels to base and fixed transmitters, and permit these channel assignments to be made in a manner such that reception by public base and fixed receivers of signals from associated mobile and fixed transmitters is protected from interference caused by the operation of independent co-channel base and fixed transmitters.

(a) Contour overlap. The FCC may grant an application requesting assignment of a channel to a proposed base, fixed or central office station transmitter only if:

(1) The interfering contour of the proposed transmitter does not overlap the service contour of any protected co-channel transmitter controlled by a carrier other than the applicant, unless that carrier has agreed in writing to accept any interference that may result from operation of the proposed transmitter; and,

(2) The service contour of the proposed transmitter does not overlap the interfering contour of any protected co-channel transmitter controlled by a carrier other than the applicant, unless the application contains a statement that the applicant agrees to accept any interference that may result from operation of the protected co-channel transmitter; and,

(3) The area and/or population to which service would be provided by the proposed transmitter is substantial, and service gained would exceed that lost as a result of agreements to accept interference.

(b) Protected transmitter. For the purposes of this section, protected transmitters are authorized transmitters for which there is a current FCC public record and transmitters proposed in prior-filed pending applications, in the Paging and Radiotelephone Service and the Rural Radiotelephone Service.

(c) VHF service contour. For base stations transmitting on the VHF channels, the radial distance from the transmitting antenna to the service contour along each cardinal radial is calculated as follows:

$$d = 1.609 \times h^{0.40} \times p^{0.20}$$

where d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

(1) Whenever the actual HAAT is less than 30 meters (98 feet), 30 must be used as the value for h in the above formula.

(2) The value used for p in the above formula must not be less than 27 dB less than the maximum ERP in any direction, or 0.1 Watt, whichever is more.

(3) The distance from the transmitting antenna to the service contour along any radial other than the eight cardinal radials is routinely calculated by linear interpolation of distance as a function of angle. However, in resolving petitions to deny, the FCC may calculate the distance to the service contour using the formula in paragraph (c) of this section with actual HAAT and ERP data for the inter-station radial and additional radials above and below the inter-station radial at 2.5° intervals.

(d) VHF interfering contour. For base and fixed stations transmitting on the VHF channels, the radial distance from the transmitting antenna to the interfering contour along each cardinal radial is calculated as follows:

(1) If the radial antenna HAAT is less than 150 meters:

$$d = 8.577 \times h^{0.24} \times p^{0.19}$$

where d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

Whenever the actual HAAT is less than 30 meters (98 feet), 30 must be used as the value for h in the above formula.

(2) If the radial antenna HAAT is 150 meters or more:

$$d = 12.306 \times h^{0.23} \times p^{0.14}$$

where d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

(3) The value used for p in the above formulas must not be less than 27 dB less than the maximum ERP in any direction, or 0.1 Watt, whichever is more.

(4) The distance from the transmitting antenna to the interfering contour along any radial other than the eight cardinal radials is routinely calculated by linear interpolation of distance as a function of angle. However, in resolving petitions to deny, the FCC may calculate the distance to the interfering contour using the appropriate formula in paragraph (d) of this section with actual HAAT and ERP data for the inter-station radial and additional radials above and below the inter-station radial at 2.5° intervals.

(e) UHF service contour. For base stations transmitting on the UHF channels, the radial distance from the transmitting antenna to the service contour along each cardinal radial is calculated as follows:

$$d = 1.726 \times h^{0.35} \times p^{0.18}$$

where d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

(1) Whenever the actual HAAT is less than 30 meters (98 feet), 30 must be used as the value for h in the above formula.

(2) The value used for p in the above formula must not be less than 27 dB less than the maximum ERP in any direction, or 0.1 Watt, whichever is more.

(3) The distance from the transmitting antenna to the service contour along any radial other than the eight cardinal radials is routinely calculated by linear interpolation of distance as a function of angle. However, in resolving petitions to deny, the FCC may calculate the distance to the service contour using the formula in paragraph (e) of this section with actual HAAT and ERP data for the inter-station radial and additional radials above and below the inter-station radial at 2.5° intervals.

(f) UHF interfering contour. For base and fixed stations transmitting on the UHF channels, the radial distance from the transmitting antenna to the interfering contour along each cardinal radial is calculated as follows:

(1) If the radial antenna HAAT is less than 150 meters:

$$d = 9.471 \times h^{0.23} \times p^{0.15}$$

where d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

Whenever the actual HAAT is less than 30 meters (98 feet), 30 must be used as the value for h in the above formula.

(2) If the radial antenna HAAT is 150 meters or more:

$$d = 6.336 \times h^{0.31} \times p^{0.15}$$

where d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

(3) The value used for p in the above formulas must not be less than 27 dB less than the maximum ERP in any direction, or 0.1 Watt, whichever is more.

(4) The distance from the transmitting antenna to the interfering contour along any radial other than the eight cardinal radials is routinely calculated by linear interpolation of distance as a function of angle. However, in resolving petitions to deny, the FCC may calculate the distance to the interfering contour using the appropriate formula in paragraph (f) of this section with actual HAAT and ERP data for the inter-station radial and additional radials above and below the inter-station radial at 2.5° intervals.

(g) Protection for BETRS. In applying the provisions of paragraph (a) of this section, if either or both of the transmitters involved is a BETRS central office station, the following contour substitutions must be used:

(1) The service contour of the BETRS central office station(s) is a circle, centered on the central office station antenna, with a radius of 40 kilometers (25 miles).

(2) The interfering contour of any station of any type, when determining whether it would overlap the service contour of a BETRS central office station, is calculated as follows:

$$d = 36.364 \times h^{0.2} \times p^{0.1}$$

where d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

Whenever the actual HAAT is less than 30 meters (98 feet), 30 must be used as the value for h in the above formula. The value used for p in the above formula must not be less than 27 dB less than the maximum ERP in any direction, or 0.1 Watt, whichever is more.

(h) Assignment of mobile channels to base or fixed transmitters. Mobile channels may be assigned to base or fixed transmitters if the following criteria are met:

(1) The paired base channel, as designated in § 22.561, is assigned to base transmitters in the same geographical area operated by the same licensee.

(2) The authorization is granted subject to the condition that no interference be caused to fixed receivers in use on or prior to

the date of the grant.

§ 22.569 Additional channel policies.

The rules in this section govern the processing of applications for a mobile channel when the applicant has applied or been granted an authorization for other mobile channels in the same geographic area. This section applies to applications proposing to use the channels listed in § 22.561, except applications that propose to use these channels to provide paging service only, which are subject to § 22.539, instead of this section. The general policy of the FCC is to assign no more than two channels in an area to a carrier per application cycle. That is, a carrier must apply for no more than two channels, receive the authorization, construct the station, provide service to subscribers, and notify the FCC of commencement of service to subscribers (FCC Form 489) before applying for additional mobile channels in that area.

(a) Transmitters in same area. Any transmitter on any channel listed in § 22.561 is considered to be in the same geographic area as another transmitter on any other channel listed in § 22.561 if:

(1) One transmitter location is within the service area of the other transmitter; or,

(2) The area within the overlap of the service contours of the two transmitters constitutes 50 percent or more of the service area of either of the transmitters.

(b) Initial channel. The FCC will not assign more than two channels for new stations. Stations are considered to be new if there are no authorized transmitters on any channel listed in § 22.561 controlled by the applicant in the same geographic area.

(c) Additional channel. Applications for transmitters to be located in the same geographic area as an authorized station controlled by the applicant, but to operate on a different channel, are considered as requests for an additional channel for the authorized station, unless paragraph (d) of this section applies.

(d) Additional transmitters on same channel. Notwithstanding other provisions of this section, applications for transmitters to be located in the same geographic area as an authorized station controlled by the applicant, and to operate on the same channel, are not considered as requests for an additional channel.

(f) Dismissal of application constituting cumulative request for more than two channels. If the FCC receives an application for a transmitter to be located in the same geographic area as a transmitter proposed in a pending application previously filed by the applicant, but on different channels such that, considered together, the applications would constitute a request for more than two channels, the FCC may dismiss the subsequent application without prejudice.

(g) Dismissal of premature applications for additional channel. If the FCC receives an application requesting two additional channels (or one additional channel) for an authorized station prior to receiving notification that the station is providing service to subscribers on all (or all except one) of the authorized channels, the FCC may dismiss that application without prejudice.

§ 22.571 Responsibility for mobile stations.

Mobile stations that are subscribers in good standing to a two-way service in the Paging and Radiotelephone Service, when receiving service from that station, are considered to be operating under the authorization of that station. Licensees are responsible for exercising effective operational control over mobile stations receiving service through their stations. Mobile stations that are subscribers in good standing to a two-way service in the Paging and Radiotelephone Service, while receiving service from a different station, are considered to be operating under the authorization of such different station. The licensee of such different station is responsible, during such temporary period, for exercising effective operational control over such mobile stations as if they were subscribers to it.

§ 22.573 Use of base transmitters as repeaters.

As an additional function, base transmitters may be used as repeaters. Licensees must be able to turn the base transmitter on or off from the control point regardless of whether a subscriber-operated transmitter is transmitting.

§ 22.575 Use of mobile channel for remote control of station functions.

Carriers may remotely control station functions (e.g. shut down or reactivate base transmitters, turn aviation obstruction warning lights on or off, etc.) using a control transmitter operating on a mobile channel, subject to the conditions in this section and in § 22.567(h).

(a) The control transmitter must be capable of overriding transmissions from subscriber-operated transmitters if necessary. Subscriber-operated transmitters must not be capable of being used to deliberately or accidentally prevent the licensee from controlling the station.

(b) The licensee must implement measures designed to prevent station functions from being controlled by persons not authorized by the licensee to control the station.

(c) The control transmitter location must be within the composite service contour of the licensee's authorized station on the paired base channel.

§ 22.577 Grandfathered dispatch service.

No new dispatch transmitters or dispatch points are authorized. Carriers that were authorized to provide dispatch service prior to January 1, 1982, and have provided such service continuously since that date may continue to provide such service.

(a) Installation. A grandfathered station licensee may install a dispatch transmitter for one or more subscribers without applying for specific authorization, provided that the following conditions are met.

(1) The dispatch transmitter must use the mobile channel that is paired with the channel used by the grandfathered base station.

(2) The dispatch transmitter antenna must not exceed the criteria in § 17.7 of this chapter that determine whether the FAA must be notified of the proposed construction.

(3) The output power of the dispatch transmitter must not exceed 10 Watts.

(4) The dispatch transmitter must be incapable of overriding the functioning of any control transmitter that may be using the same channel.

(5) The dispatch transmitter must be under the continuous supervision of the licensee.

(b) Notification. Licensees must notify the FCC by letter whenever a dispatch transmitter is installed pursuant to paragraph (a) of this section. The notification must include the name and address of the subscriber(s) for which the dispatch transmitter was installed, the location of the dispatch transmitter, the height of antenna structure above ground and above mean sea level, the channel(s) used, and the call sign and location of the grandfathered base station.

(c) Termination without hearing. Operation of a dispatch transmitter pursuant to paragraphs (a) and (b) of this section may be terminated by the FCC without a hearing upon notice to the licensee.

(d) Dispatch transmitters requiring authorization. A dispatch transmitter that does not meet the requirements of paragraph (a) of this section may be installed only upon grant of an application for authorization therefor.

(e) Permissible communications. A dispatch transmitter operated by a subscriber may communicate only with mobile transmitters operated by that subscriber through the associated base transmitter.

§ 22.579 Operation of mobile transmitters across U.S.-Canada border.

Mobile stations licensed by Canada may receive two-way service while in the United States from stations licensed under this part, after authorization has been granted by the FCC. Mobile stations that normally operate under the authority of base stations licensed under this part may receive two-way service while in Canada from stations licensed under this part or by Canada, upon authorization by Canada.

§ 22.589 One-way or two-way application requirements.

In addition to information required by Subparts B and D of this part and § 22.529, applications for authorization to operate a transmitter on the channels listed in § 22.561 must contain the applicable supplementary information described in this section.

(a) Interference exhibit. Except as provided in paragraph (b) of this section, an exhibit demonstrating compliance with § 22.567 with regard to protected transmitters is required. This exhibit must:

(1) For UHF channels, identify each protected transmitter located within 108 kilometers (67 miles) of the proposed transmitter in directions in which the distance to the interfering contour is 76.4 kilometers (47.5 miles) or less, and within 178 kilometers (111 miles) of the proposed transmitter in directions in which the distance to the interfering contour exceeds 76.4 kilometers (47.5 miles); and identify each protected Basic Exchange Telephone Radio System central office transmitter in the Rural Radiotelephone Service within 231 kilometers (144 miles),

(2) For VHF channels, identify each protected transmitter located within 135 kilometers (84 miles) of the proposed transmitter in directions in which the distance to the interfering contour is 93.3 kilometers (58 miles) or less, and within 178 kilometers (111 miles) of the proposed transmitter in directions in which the distance to the interfering contour exceeds 93.3 kilometers (58 miles).

(3) For each protected transmitter identified, show the results of distance calculations indicating that there would be no overlap of service and interfering contours, or alternatively, indicate that the licensee of or applicant for the protected transmitter and/or the applicant, as required, have agreed in writing to accept any interference resulting from operation of the proposed transmitter.

(b) Encompassment exhibit. An exhibit showing that the area within the interfering contour of the proposed transmitter would be totally encompassed by interfering contours of operating co-channel base transmitters controlled by the applicant is required for applications to operate a transmitter with ERP exceeding the basic power and height-power limits of § 22.565. This encompassment exhibit may substitute for the

interference exhibit required in paragraph (a) of this section.

POINT-TO-POINT OPERATION

§ 22.591 Channels for point-to-point operation.

The following channels are allocated for assignment to fixed transmitters that support other transmitters that provide public mobile service. Unless otherwise indicated, all channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

VHF channels

72.02	72.36	72.80	75.66
72.04	72.38	72.82	75.68
72.06	72.40	72.84	75.70
72.08	72.42	72.86	75.72
72.10	72.46	72.88	75.74
72.12	72.50	72.90	75.76
72.14	72.54	72.92	75.78
72.16	72.58	72.94	75.80
72.18	72.62	72.96	75.82
72.20	72.64	72.98	75.84
72.22	72.66	75.42	75.86
72.24	72.68	75.46	75.88
72.26	72.70	75.50	75.90
72.28	72.72	75.54	75.92
72.30	72.74	75.58	75.94
72.32	72.76	75.62	75.96
72.34	72.78	75.64	75.98

UHF channels - State of Hawaii

488.250 .. 491.250	489.750 .. 492.750
488.750 .. 491.750	490.250 .. 493.250
489.250 .. 492.250	490.750 .. 493.750

Microwave channels

(bandwidth individually assigned)

2110.1	2160.1
2110.2	2160.2
2110.3	2160.3
|	|
|	|
|	|
2129.9	2179.9

(a) The 72-76 MHz channels may be assigned under developmental authority pursuant to the requirements of § 22.413. The 72-76 MHz channels may also be used in point-to-multipoint configurations. The 72-76 MHz channels are also allocated for assignment in the Private Radio Services (see Part 90 of this chapter).

(b) Channels in the frequency ranges 2110-2130 and 2160-2180 MHz are also allocated for assignment in the broadband Personal Communications Service (see Part 24 of this chapter), the Multipoint Distribution Service and the Point-to-Point Microwave Radio Service (see Part 21 of this chapter). Assignment of channels in these ranges is subject to the transition rules in § 22.602.

(c) Channels in the frequency ranges 488.250-490.750 and 491.250-493.750 MHz may be assigned only to inter-island fixed stations located in the State of Hawaii.

§ 22.593 Effective radiated power limits.

The effective radiated power of fixed stations operating on the channels listed in § 22.591 must not exceed 150 Watts. The equivalent isotropic radiated power of fixed stations operating in the frequency ranges 2110-2130 and 2160-2180 MHz must not exceed the limits set forth in Part 21 of this chapter for stations operating in these frequency ranges.

§ 22.599 Assignment of 72-76 MHz channels.

Because of the potential for interference to the reception of TV Channels 4 and 5 by broadcast television sets and video recorders, assignments of the 72-76 MHz channels are subject to the following conditions:

(a) Assignments of 72-76 MHz channels for use within 129 kilometers (80 miles) of a full service TV station transmitting on TV Channel 4 or 5 are subject to the condition that the licensee must eliminate any interference caused to television reception on TV Channels 4 and 5. If the FCC notifies the licensee of an interference problem and the licensee does not resolve the problem within 90 days of such notification, operation of the interfering 72-76 MHz fixed station must be immediately discontinued.

(b) 72-76 MHz channels may be assigned for use within 16 kilometers (10 miles) of a full service TV station transmitting on TV Channel 4 or 5 under a developmental authorization, pursuant to § 22.413. However, for use within 50 meters (164 feet) of a TV station transmitting on TV Channel 4 or 5, 72-76 MHz channels may be assigned under a regular authorization, rather than a developmental authorization.

§ 22.601 Assignment of microwave channels.

Assignment of the microwave channels listed in § 22.591 is subject to the transition rules in § 22.602. No new systems will be authorized under this part.

(a) Coordination required. Before filing applications for authority to modify existing stations on these channels or major amendments to such applications, carriers must coordinate the planned channel usage, using the procedure outlined in § 22.150, with affected parties in this radio service and the

Point-to-point Microwave Service and the Multipoint Distribution Service. Affected parties are licensees and other applicants with previously filed pending applications whose stations could affect or be affected by the proposed modification of the existing station in terms of interference.

(b) System parameters. In designing a system modification, the applicant must select sites, equipment and channels that will avoid harmful interference to other users. All parties must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, a party receiving notification is not obligated to suggest changes or re-design a proposal in cases involving conflicts. The applicant must identify in the application all parties with which the technical proposal was coordinated. In the event that technical problems are not resolved or if an affected party does not respond to coordination efforts within 30 days after notification, an explanation must be contained in the application. Where technical conflicts are resolved by an agreement between the parties that requires special procedures to reduce the likelihood of harmful interference (such as the use of artificial site shielding), or would result in a reduction of quality or capacity of either system, the details thereof must be contained in the application.

(c) Bandwidth. Applicants must request the minimum emission bandwidth necessary. The FCC does not authorize bandwidths larger than 800 kHz under this part.

§ 22.602 Transition of the 2110-2130 and 2160-2180 MHz channels to emerging technologies.

The microwave channels listed in § 22.591 have been allocated for use by emerging technologies services (ETS). No new systems will be authorized under this part. The rules in this section provide for a transition period during which existing Paging and Radiotelephone Service (PARS) licensees using these channels may relocate operations to other media or to other fixed channels, including those in other microwave bands. For PARS licensees relocating operations to other microwave bands, authorization must be obtained under Part 21 of this chapter.

(a) Licensees proposing to implement ETS may negotiate with PARS licensees authorized to use these channels, for the purpose of agreeing to terms under which the PARS licensees would -

(1) Relocate their operations to other fixed microwave bands or other media, or alternatively,

(2) Accept a sharing arrangement with the ETS licensee that may result in an otherwise impermissible level of interference to the PARS operations.

(b) PARS operations on these channels will continue to be co-primary with other users of this spectrum until two years after the FCC commences acceptance of applications for ETS, and until one year after an ETS licensee initiates negotiations for relocation of the fixed microwave licensee's operations.

(c) After the periods specified in paragraph (b) of this section, existing PARS operations become secondary to ETS operations, provided that:

(1) The ETS applicant, provider, licensee or representative guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable additional costs that the PARS licensee might incur as a result of relocation to another fixed band or migration to another medium;

(2) The ETS applicant, provider, licensee or representative completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are involved, identifying and obtaining, on the incumbents behalf, new channels and frequency coordination; and,

(3) The ETS applicant, provider, licensee or representative builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The PARS licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities, the PARS licensee demonstrates that the new facilities are not comparable to the former facilities, the ETS applicant, provider, licensee or representative must remedy the defects or pay to relocate the PARS licensee back to its former (or equivalent) 2 GHz channels.

§ 22.603 488–494 MHz fixed service in Hawaii.

Before filing applications for authorization of inter-island control and/or repeater stations, applicants must coordinate the planned channel usage with existing licensees and other applicants with previously filed applications, using the procedure outlined in § 22.150. Applicants and licensees shall cooperate fully and make reasonable efforts to resolve any channel usage conflicts. In situations where technical solutions to such conflicts cannot be devised, the FCC may select a channel or channels to assign or may designate the application(s) for hearing. To be acceptable for filing, applications and major technical amendments must contain a certification that coordination has been completed and an exhibit listing the name(s) of the licensees and applicants with which the planned channel usage has been coordinated.

POINT-TO-MULTIPOINT OPERATION

§ 22.621 Channels for point-to-multipoint operation.

The following channels are allocated for assignment to transmitters utilized within point-to-multipoint systems that support transmitters that provide public mobile service. Unless otherwise indicated, all channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

Public Mobile Pool

(25 kHz bandwidth)

928.8625	959.8625	928.9375	959.9375
928.8875	959.8875	928.9625	959.9625
928.9125	959.9125	928.9875	959.9875

(12.5 kHz bandwidth)

928.85625	959.85625	928.93125	959.93125
928.86875	959.85625	928.94375	959.94375
928.88125	959.88125	928.95625	959.95625
928.89375	959.89375	928.96875	959.96875
928.90625	959.90625	928.98125	959.98125
928.91875	959.91875	928.99375	959.99375

Private Radio General Access Pool

(25 kHz bandwidth)

956.2625	956.3125	956.3625	956.4125
956.2875	956.3375	956.3875	956.4375

928.0125	952.0125	928.1875	952.1875
928.0375	952.0375	928.2125	952.2125
928.0625	952.0625	928.2375	952.2375
928.0875	952.0875	928.2625	952.2625
928.1125	952.1125	928.2875	952.2875
928.1375	952.1375	928.3125	952.3125
928.1625	952.1625	928.3375	952.3375

(12.5 kHz bandwidth)

956.25625	956.30625	956.35625	956.40625
956.26875	956.31875	956.36875	956.41875
956.28125	956.33125	956.38125	956.43125
956.29375	956.34375	956.39375	956.44375

928.00625	952.00625	928.18125	952.18125
928.01875	952.01875	928.19375	952.19375
928.03125	952.03125	928.20625	952.20625
928.04375	952.04375	928.21875	952.21875
928.05625	952.05625	928.23125	952.23125
928.06875	952.06875	928.24375	952.24375
928.08125	952.08125	928.25625	952.25625
928.09375	952.09375	928.26875	952.26875
928.10625	952.10625	928.28125	952.28125
928.11875	952.11875	928.29375	952.29375
928.13125	952.13125	928.30625	952.30625
928.14375	952.14375	928.31875	952.31875
928.15625	952.15625	928.33125	952.33125
928.16875	952.16875	928.34375	952.34375

Private Radio Power Pool

(25 kHz bandwidth)

928.3625	952.3625	928.6125	952.6125
928.3875	952.3875	928.6375	952.6375
928.4125	952.4125	928.6625	952.6625
928.4375	952.4375	928.6875	952.6875
928.4625	952.4625	928.7125	952.7125
928.4875	952.4875	928.7375	952.7375
928.5125	952.5125	928.7625	952.7625
928.5375	952.5375	928.7875	952.7875
928.5625	952.5625	928.8125	952.8125
928.5875	952.5875	928.8375	952.8375

(12.5 kHz bandwidth)

928.35625	952.35625	928.60625	952.60625
928.36875	952.36875	928.61875	952.61875
928.38125	952.38125	928.63125	952.63125
928.39375	952.39375	928.64375	952.64375
928.40625	952.40625	928.65625	952.65625
928.41875	952.41875	928.66875	952.66875
928.43125	952.43125	928.68125	952.68125
928.44375	952.44375	928.69375	952.69375
928.45625	952.45625	928.70625	952.70625
928.46875	952.46875	928.71875	952.71875
928.48125	952.48125	928.73125	952.73125
928.49375	952.49375	928.74375	952.74375
928.50625	952.50625	928.75625	952.75625
928.51875	952.51875	928.76875	952.76875
928.53125	952.53125	928.78125	952.78125
928.54375	952.54375	928.79375	952.79375
928.55625	952.55625	928.80625	952.80625
928.56875	952.56875	928.81875	952.81875
928.58125	952.58125	928.83125	952.83125
928.59375	952.59375	928.84375	952.84375

Public, Private, Government Shared Pool

(12.5 kHz bandwidth)

932.00625	941.00625	932.25625	941.25625
932.01875	941.01875	932.26875	941.26875
932.03125	941.03125	932.28125	941.28125
932.04375	941.04375	932.29375	941.29375
932.05625	941.05625	932.30625	941.30625
932.06875	941.06875	932.31875	941.31875
932.08125	941.08125	932.33125	941.33125
932.09375	941.09375	932.34375	941.34375

932.10625	941.10625	932.35625	941.35625
932.11875	941.11875	932.36875	941.36875
932.13125	941.13125	932.38125	941.38125
932.14375	941.14375	932.39375	941.39375
932.15625	941.15625	932.40625	941.40625
932.16875	941.16875	932.41875	941.41875
932.18125	941.18125	932.43125	941.43125
932.19375	941.19375	932.44375	941.44375
932.20625	941.20625	932.45625	941.45625
932.21875	941.21875	932.46875	941.46875
932.23125	941.23125	932.48125	941.48125
932.24375	941.24375	932.49375	941.49375

UHF Channels in Specified Urban Areas

Boston

470.0125	473.0125	482.0125	485.0125
470.0375	473.0375	482.0375	485.0375
470.0625	473.0625	482.0625	485.0625
470.0875	473.0875	482.0875	485.0875
470.1125	473.1125	482.1125	485.1125
470.1375	473.1375	482.1375	485.1375
470.1625	473.1625	482.1625	485.1625
470.1875	473.1875	482.1875	485.1875
470.2125	473.2125	482.2125	485.2125
470.2375	473.2375	482.2375	485.2375
470.2625	473.2625	482.2625	485.2625
470.2875	473.2875	482.2875	485.2875

Chicago, Cleveland

470.0125	473.0125	476.0125	479.0125
470.0375	473.0375	476.0375	479.0375
470.0625	473.0625	476.0625	479.0625
470.0875	473.0875	476.0875	479.0875
470.1125	473.1125	476.1125	479.1125
470.1375	473.1375	476.1375	479.1375
470.1625	473.1625	476.1625	479.1625
470.1875	473.1875	476.1875	479.1875
470.2125	473.2125	476.2125	479.2125
470.2375	473.2375	476.2375	479.2375
470.2625	473.2625	476.2625	479.2625
470.2875	473.2875	476.2875	479.2875

New York - Northeastern New Jersey

470.0125	470.1625	476.0125	476.1625
470.0375	470.1875	476.0375	476.1875
470.0625	470.2125	476.0625	476.2125
470.0875	470.2375	476.0875	476.2375
470.1125	470.2625	476.1125	476.2625
470.1375	470.2875	476.1375	476.2875

Dallas-Fort Worth

482.0125	482.1625	485.0125	485.1625
482.0375	482.1875	485.0375	485.1875
482.0625	482.2125	485.0625	485.2125
482.0875	482.2375	485.0875	485.2375
482.1125	482.2625	485.1125	485.2625
482.1375	482.2875	485.1375	485.2875

Detroit

476.0125	479.0125	482.0125	485.0125
476.0375	479.0375	482.0375	485.0375
476.0625	479.0625	482.0625	485.0625
476.0875	479.0875	482.0875	485.0875
476.1125	479.1125	482.1125	485.1125
476.1375	479.1375	482.1375	485.1375
476.1625	479.1625	482.1625	485.1625
476.1875	479.1875	482.1875	485.1875
476.2125	479.2125	482.2125	485.2125
476.2375	479.2375	482.2375	485.2375
476.2625	479.2625	482.2625	485.2625
476.2875	479.2875	482.2875	485.2875

Houston

488.1625	491.1625	488.2375	491.2375
488.1875	491.1875	488.2625	491.2625
488.2125	491.2125	488.2875	491.2875

Los Angeles

470.0125	473.0125	506.0625	509.0625
470.0375	473.0375	506.0875	509.0875
506.0125	509.0125	506.1125	509.1125
506.0375	509.0375		

Miami

470.0125	470.1625	473.0125	473.1625
470.0375	470.1875	473.0375	473.1875
470.0625	470.2125	473.0625	473.2125
470.0875	470.2375	473.0875	473.2375
470.1125	470.2625	473.1125	473.2625
470.1375	470.2875	473.1375	473.2875

Philadelphia

500.0125	503.0125	506.0125	509.0125
500.0375	503.0375	506.0375	509.0375
500.0625	503.0625	506.0625	509.0625
500.0875	503.0875	506.0875	509.0875
500.1125	503.1125	506.1125	509.1125
500.1375	503.1375	506.1375	509.1375
500.1625	503.1625	506.1625	509.1625
500.1875	503.1875	506.1875	509.1875
500.2125	503.2125	506.2125	509.2125

500.2375	503.2375	506.2375	509.2375
500.2625	503.2625	506.2625	509.2625
500.2875	503.2875	506.2875	509.2875

Pittsburgh

470.0125	470.1625	473.0125	473.1625
470.0375	470.1875	473.0375	473.1875
470.0625	470.2125	473.0625	473.2125
470.0875	470.2375	473.0875	473.2375
470.1125	470.2625	473.1125	473.2625
470.1375	470.2875	473.1375	473.2875

San Francisco

482.0125	485.0125	488.0125	491.0125
482.0375	485.0375	488.0375	491.0375
482.0625	485.0625	488.0625	491.0625
482.0875	485.0875	488.0875	491.0875
482.1125	485.1125	488.1125	491.1125
482.1375	485.1375	488.1375	491.1375
482.1625	485.1625	488.1625	491.1625
482.1875	485.1875	488.1875	491.1875
482.2125	485.2125	488.2125	491.2125
482.2375	485.2375	488.2375	491.2375
482.2625	485.2625	488.2625	491.2625
482.2875	485.2875	488.2875	491.2875

Washington, DC

488.0125	491.0125	494.0125	497.0125
488.0375	491.0375	494.0375	497.0375
488.0625	491.0625	494.0625	497.0625
488.0875	491.0875	494.0875	497.0875
488.1125	491.1125	494.1125	497.1125
488.1375	491.1375	494.1375	497.1375
488.1625	491.1625	494.1625	497.1625
488.1875	491.1875	494.1875	497.1875
488.2125	491.2125	494.2125	497.2125
488.2375	491.2375	494.2375	497.2375
488.2625	491.2625	494.2625	497.2625
488.2875	491.2875	494.2875	497.2875

(a) Channels in the Private Radio General Access Pool and the Private Radio Power Pool may be assigned only if the applicant shows that none of the channels in the Public Mobile Pool are available for the proposed use.

(b) Channels in the Public, Private, Government Shared Pool are allocated for assignment in the Private Operational-Fixed Microwave Service (47 CFR Part 94) and to U.S. government fixed stations.

§ 22.623 System configuration.

This section requires a minimum configuration for point-to-multipoint systems using the channels listed in § 22.621.

(a) 928-960 MHz. These channels may be assigned, individually or paired, only to fixed transmitters in a system that controls at least four public mobile base transmitters that transmit on the same channel. If a 932-933 MHz channel and a 941-942 MHz channel are assigned as a pair, the 941-942 MHz channel must be assigned only to control transmitters; the 932-933 MHz channel may be assigned to control or fixed relay transmitters.

(b) 470-512 MHz. These channels may be assigned only individually (unpaired), to control transmitters that directly control at least four public mobile base transmitters that transmit on the same channel. Fixed relay transmitters are not authorized.

(c) Selection and assignment. The FCC selects and assigns a channel when granting applications for authorization to operate a new station to transmit in the 470-512, 932-933 and 941-942 MHz frequency ranges. Applicants having a preference may request the assignment of a specific channel or channel pair, but the FCC may in some cases be unable to satisfy such requests.

§ 22.625 Transmitter locations.

This section governs where point-to-multipoint transmitters on the channels listed in § 22.621 may be located.

(a) 928-960 MHz. In this frequency range, the required minimum distance separation between co-channel fixed transmitters is 113 kilometers (70 miles). However, this requirement may be waived if the applicant submits an engineering analysis that shows that no interference would be caused to either system. In such a case, a developmental authorization may be issued (see § 22.415). If no interference is experienced during the term of the developmental authorization, the licensee may apply for a regular authorization.

(b) 470-512 MHz. The purpose of the rule in paragraph (b)(1) of this section is to define the areas in which the 470-512 MHz channels are allocated for public mobile use. The purpose of the rules in paragraphs (b)(2) and (b)(3) of this section is to reduce the likelihood that interference to television reception from public mobile operations on these channels will occur.

(1) Control transmitter locations. Control transmitter locations must be within 80 kilometers (50 miles) of the designated locations in this paragraph.

Urban area	N. Latitude	W. Longitude
Boston, MA	42°21'24"	71°03'24"
Chicago, IL	41°52'28"	87°38'22"
Cleveland, OH	41°29'51"	81°41'50"
Dallas, TX	32°47'09"	96°47'37"
Detroit, MI	42°19'48"	83°02'57"

Houston, TX	29°45'26"	95°21'37"
Los Angeles, CA	34°03'15"	118°14'28"
Miami, FL	25°46'37"	80°11'32"
New York, NY	40°45'06"	73°59'39"
Philadelphia, PA	39°56'58"	75°09'21"
Pittsburgh, PA	40°26'19"	80°00'00"
San Francisco-Oakland, CA	37°46'39"	122°24'40"
Washington, DC	38°53'51"	77°00'33"

(2) Protection from intermodulation interference. Control transmitter locations must be at least 1.6 kilometers (1 mile) from the main transmitter locations of all TV stations transmitting on TV channels separated by 2, 3, 4, 5, 7, or 8 TV channels from the TV channel containing the frequencies on which the control station will transmit. This requirement is intended to reduce the likelihood of intermodulation interference.

(3) Co-channel protection from control transmitters with high antennas. This paragraph applies only to control transmitters that utilize an antenna height of more than 152 meters (500 feet) above average terrain. The distance between the location of such a control transmitter and the applicable protected TV station location specified in this paragraph must equal or exceed the sum of the distance from the control transmitter location to the radio horizon in the direction of the specified location and 89 kilometers (55 miles - representing the distance from the main transmitter location of the TV station to its Grade B contour in the direction of the control transmitter). The protected TV station locations in this paragraph are the locations of record as of September 1974, and these do not change even though the TV stations may have been subsequently relocated.

(i) The protected TV station locations are as follows:

Control Transmitter Frequency Range	Protected TV Station Location		
470-476 MHz	Washington, DC	38°57'17"	77°00'17"
476-482 MHz	Lancaster, PA	40°15'45"	76°27'49"

(ii) The distance to the radio horizon is calculated using the following formula:

$$d = \sqrt{17 \times h}$$

where d is the distance to the radio horizon in kilometers
h is the height of the antenna center of radiation above ground level in meters

§ 22.627 Effective radiated power limits.

The effective radiated power (ERP) of transmitters operating on the channels listed in § 22.621 must not exceed the limits in this section.

(a) Maximum ERP. The ERP must not exceed the applicable limits in this paragraph under any circumstances.

Frequency Range (MHz)	Maximum ERP (Watts)
470-512	1000
928-929	50
932-933	30
941-942	600
952-960	150

(b) 470-512 MHz limits. The purpose of the rules in paragraphs (b)(1) through (b)(3) of this section is to reduce the likelihood that interference to television reception from public mobile operations on these channels will occur. The protected TV station locations specified in this section are the locations of record as of September 1974, and these do not change even though the TV stations may have been subsequently relocated.

(1) Co-channel protection. The ERP of control transmitters must not exceed the limits in the tables in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The limits depend upon the height above average terrain of the control transmitter antenna and the distance between the control transmitter and the nearest protected TV station location in paragraph (b)(1)(i) of this section.

(i) The protected TV station locations are as follows:

Control Transmitter Frequency Range	Protected TV Station Location		
470-476 MHz	Jacksonville, IL	39°45'52"	90°30'29"
	Mt. Pleasant, MI	43°34'24"	84°46'21"
	Oxford, OH	39°30'26"	84°44'09"
	Washington, DC	38°57'17"	77°00'17"
476-482 MHz	Champaign, IL	40°04'11"	87°54'45"
	Madison, WI	43°03'01"	89°29'15"
	Parkersburg, WV	39°20'50"	81°33'56"
	Fort Wayne, IN	41°05'35"	85°10'42"
	Lancaster, PA	40°15'45"	76°27'49"
482-488 MHz	South Bend, IN	41°36'26"	86°12'48"
488-494 MHz	Philadelphia, PA	40°02'30"	75°14'24"
494-500 MHz	None		
500-506 MHz	Johnstown, PA	40°19'47"	78°53'45"
506-512 MHz	Washington, DC	38°57'49"	77°06'18"
	Waterbury, CT	41°31'02"	73°01'00"

Table E-3 - Maximum ERP (Watts) for Control Transmitters (HAAT 152 meters or less)

Distance to Protected TV Station in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)									
	15 (50)	30 (100)	46 (150)	61 (200)	76 (250)	91 (300)	107 (350)	122 (400)	137 (450)	152 (500)
209 (130)	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
201 (125)	1000	1000	1000	1000	1000	1000	1000	850	750	725
193 (120)	1000	1000	1000	1000	900	750	675	600	550	500
185 (115)	1000	1000	800	725	600	525	475	425	375	350
177 (110)	850	700	600	500	425	375	325	300	275	225
169 (105)	600	475	400	325	275	250	225	200	175	150
161 (100)	400	325	275	225	175	150	140	125	110	100
153 (95)	275	225	175	125	110	95	80	70	60	50
145 (90)	175	125	100	75	50					

See § 22.627(b)(1)(ii). This table is for antenna heights of 152 meters (500 feet) or less above average terrain. For antenna heights between those in the table, use the next higher antenna height. For distances between those in the table, use the next lower distance.

(ii) Table E-3 and E-4 apply to control transmitters in the New York - Northeastern New Jersey and Cleveland urban areas that transmit on channels in the 476-482 MHz range and to control transmitters in the Detroit urban area that transmit on channels in the 482-488 MHz range.

Table E-4 - Maximum ERP (Watts) for Control Transmitters (HAAT more than 152 meters)

Distance to Protected TV Station in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)					
	152 (500)	305 (1000)	457 (1500)	610 (2000)	762 (2500)	914 (3000)
209 (130)	1000	447	219	117	71	46
193 (120)	500	209	95	50	30	19
177 (110)	225	91	35	19	11	8
161 (100)	100	30	10	5	3	2
153 (95)	50	13	5	3	2	1

See § 22.627(b)(1)(ii). This table is for antenna heights of more than 152 meters (500 feet) above average terrain. For intermediate values of height and/or distance, use linear interpolation to obtain the maximum permitted ERP.

Table E-5 - Maximum ERP (Watts) for Control Transmitters (HAAT 152 meters or less)

Distance to Protected TV Station in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)									
	15 (50)	30 (100)	46 (150)	61 (200)	76 (250)	91 (300)	107 (350)	122 (400)	137 (450)	152 (500)
261 (162)	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
257 (160)	1000	1000	1000	1000	1000	1000	1000	1000	1000	800
249 (155)	1000	1000	1000	1000	1000	875	775	700	625	575
241 (150)	1000	1000	950	775	725	625	550	500	450	400
233 (145)	850	750	650	575	500	440	400	350	320	300
225 (140)	600	575	465	400	350	300	275	250	230	225
217 (135)	450	400	335	300	255	240	200	185	165	150
209 (130)	350	300	245	200	185	160	145	125	120	100
201 (125)	225	200	170	150	125	110	100	90	80	75
193 (120)	175	150	125	105	90	80	70	60	55	50

See § 22.627(b)(1)(iii). This table applies for antenna heights of 152 meters (500 feet) or less above average terrain. For antenna heights between those in the table, use the next higher antenna height. For distances between those in the table, use the next lower distance.

(iii) Tables E-5 and E-6 apply to all control transmitters except those to which Tables E-3 and E-4 apply.

Table E-6 - Maximum ERP (Watts) for Control Transmitters (HAAT more than 152 meters)

Distance to Protected TV Station in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)					
	152 (500)	305 (1000)	457 (1500)	610 (2000)	762 (2500)	914 (3000)
261 (162)	1000	501	282	170	110	71
241 (150)	400	209	110	60	36	23
225 (140)	225	102	50	28	16	10
209 (130)	100	48	21	11	7	5
193 (120)	50	19	9	5	3	2

See § 22.627(b)(1)(iii). This table is for antenna heights of more than 152 meters (500 feet) above average terrain. For intermediate values of height and/or distance, use linear interpolation to obtain the maximum permitted ERP.

(2) Adjacent channel protection. The ERP of control transmitters must not exceed the limits in Table E-7. The limits depend upon the height above average terrain of the control transmitter antenna and the distance between the control transmitter and the nearest protected TV station location listed in this paragraph. The protected TV station locations are as follows:

Control Transmitter Frequency Range / Protected TV Station Location			TV Channel
470-476 MHz			
Hanover, NH	43°42'30"	72°09'16"	(15)
Madison, WI	43°03'01"	89°29'15"	(15)
Champaign, IL	40°04'11"	87°54'45"	(15)
San Diego, CA	32°41'48"	116°56'10"	(15)
Lancaster, PA	40°15'45"	76°27'49"	(15)
Parkersburg, WV	39°20'50"	81°33'56"	(15)
476-482 MHz			
South Bend, IN	41°36'20"	86°12'44"	(16)
Pittsburgh, PA	40°26'46"	79°57'51"	(16)
Mt. Pleasant, MI	43°34'24"	84°46'21"	(14)
Scranton, PA	41°10'58"	75°52'21"	(16)
482-488 MHz			
Hanover, NH	43°42'30"	72°09'16"	(15)
Fort Wayne, IN	41°05'35"	85°10'42"	(15)
488-494 MHz			
Salisbury, MD	38°24'15"	75°34'45"	(16)
494-500 MHz			
Philadelphia, PA	40°02'30"	75°14'24"	(17)
500-506 MHz			
Washington, DC	38°57'49"	77°06'18"	(20)
506-512 MHz			
Harrisburg, PA	40°20'44"	76°52'09"	(21)

(c) Los Angeles area. This paragraph applies only to control transmitters in the Los Angeles urban area that utilize an antenna height of 457 or more meters (1500 or more feet) above mean sea level. The ERP of such transmitters must not exceed the following limits:

Antenna height AMSL in meters (feet)	ERP (Watts)
457 (1500) to 610 (2000)	155
611 (2001) to 762 (2500)	100
763 (2501) to 914 (3000)	70
915 (3001) to 1067 (3500)	50
1068 (3501) to 1219 (4000)	40
1220 (4001) to 1372 (4500)	30
1373 (4501) and above	25

Table E-7 - Maximum ERP (Watts) for Control Transmitters

Distance to Protected TV Station in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)								
	30 (100)	46 (150)	61 (200)	76 (250)	91 (300)	107 (350)	122 (400)	137 (450)	152 (500)
108 (67)	1000	1000	1000	1000	1000	1000	1000	1000	1000
106 (66)	1000	1000	1000	1000	1000	1000	1000	1000	750
105 (65)	1000	1000	1000	1000	1000	1000	825	650	600
103 (64)	1000	1000	1000	1000	1000	775	625	500	400
101 (63)	1000	1000	1000	1000	440	400	350	320	300
100 (62)	1000	1000	1000	525	375	250	200	150	125
98 (61)	1000	700	450	250	200	125	100	75	50
97 (60)	1000	425	225	125	100	75	50		

See § 22.627(b)(2). This table applies to control transmitters in the Boston, Chicago, Cleveland, Detroit, Los Angeles, New York - Northeastern New Jersey, Philadelphia, Pittsburgh and Washington, DC urban areas. This table is for antenna heights of 152 meters (500 feet) or less above average terrain. For antenna heights between those in the table, use the next higher antenna height. For distances between those in the table, use the next lower distance.

470-512 MHZ TRUNKED MOBILE OPERATION

§ 22.651 470-512 MHz channels for trunked mobile operation.

The following channels are allocated for assignment to transmitters providing trunked public mobile service within the specified urban areas. All channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

Houston

488.0125 .... 491.0125	488.0875 .... 491.0875
488.0375 .... 491.0375	488.1125 .... 491.1125
488.0625 .... 491.0625	488.1375 .... 491.1375

New York - Northern New Jersey

473.0125 .... 479.0125	473.1625 .... 479.1625
473.0375 .... 479.0375	473.1875 .... 479.1875
473.0625 .... 479.0625	473.2125 .... 479.2125
473.0875 .... 479.0875	473.2375 .... 479.2375
473.1125 .... 479.1125	473.2625 .... 479.2625
473.1375 .... 479.1375	473.2875 .... 479.2875

§ 22.653 Eligibility.

Only licensees already authorized to provide trunked mobile service or their successors in interest are eligible to apply for additional use of these channels for trunked mobile service, and then only in the urban areas already authorized.

§ 22.655 Channel usage.

The FCC is redesignating the public mobile channels in the 470-512 MHz range from trunked mobile operation to point-to-multipoint operation as the demand for trunked mobile service decreases.

(a) The licensees in each market shall measure channel usage at least once every 3 months. These measurements shall be reported to the FCC within 30 days. Measurements shall be taken during the busiest 12-hour periods on 3 days (within a 7-day period) having normal usage. The information must be reported separately for each of the 3 days selected, must be reported by dates, and must disclose the following:

(1) The number of mobile units in service during each of the days specified;

(2) The number of calls completed each hour;

(3) The total number of minutes during each hour that the channels were utilized for communications by the mobile units;

(4) The average channel usage for the busiest hour for the 3 days measured; and

(5) Any additional information that more accurately reflects channel usage.

(b) If the measured probability of blocking decreases below 25%, the FCC will redesignate channels not needed to maintain blocking at 25% or less. The number of channels needed to maintain blocking below 25% will be determined from the channel usage reports and the Erlang C tables.

(c) Although two or more channels are necessary to provide trunked service, the FCC may, pursuant to this section, reduce to one the number of channels assigned. In such cases, the licensee may provide non-trunked two-way public mobile service on the one remaining channel.

§ 22.657 Transmitter locations.

The purpose of the rules in paragraphs (a) and (b) of this section is to define the areas in which the 470-512 MHz channels are allocated for public mobile use. The purpose of the rules in paragraphs (c) through (f) of this section is to reduce the likelihood that interference to television reception from public mobile operations on these channels will occur. The protected TV station locations specified in paragraphs (d), (e)(1) and (f) of this section are the locations of record as of September 1974, and these do not change even though the TV stations may have been subsequently relocated.

(a) Base transmitter locations. Base transmitter locations must be within 80 kilometers (50 miles) of the designated locations in this paragraph. Mobile transmitters must not be operated at locations more than 129 kilometers (80 miles) from the designated locations in this paragraph.

Urban area	N. Latitude	W. Longitude
Houston, TX	29° 45'26"	95° 21'37"
New York, NY - NE NJ	40° 45'06"	73° 59'39"

(b) Mobile area of operation. Mobile transmitters must not be operated at locations more than 48 kilometers (30 miles) from all associated base stations.

(c) Protection from intermodulation interference. Base transmitter locations must be at least 1.6 kilometers (1 mile) from the current main transmitter locations of all TV stations transmitting on TV channels separated by 2, 3, 4, 5, 7, or 8 TV channels from the TV channel containing the frequencies on which the base station will transmit. This requirement is intended to reduce the likelihood of intermodulation interference.

(d) Adjacent channel protection from mobile transmitters. Base transmitter locations must be at least 145 kilometers (90 miles) from the applicable protected TV station locations specified in this paragraph. This requirement is intended to provide a 0 dB minimum desired to undesired signal strength

ratio at the Grade B contour of an adjacent channel TV station.

Mobile Transmitter Frequency Range	Protected TV Station Location		TV Channel
470-476 MHz	Lancaster, PA	40° 15'45"	76° 27'49" (15)
476-482 MHz	Scranton, PA	41° 10'58"	75° 52'21" (16)

(e) Co-channel protection from mobile transmitters. Base transmitter locations must be at least the distance specified in paragraph (e)(2) of this section from the applicable protected TV station locations specified in paragraph (e)(1) of this section. This requirement is intended to provide a 40 dB minimum desired to undesired signal strength ratio at the Grade B contour of a co-channel TV station.

(1) The protected TV station locations are as follows:

Mobile Transmitter Frequency Range	Protected TV Station Location		
470-476 MHz	Washington, DC	38° 57'17"	77° 00'17"
476-482 MHz	Lancaster, PA	40° 15'45"	76° 27'49"

(2) The required minimum distance depends upon the effective radiated power (ERP) of the most powerful mobile transmitter(s) in the system:

Mobile unit ERP	Minimum distance	
60 watts	193 kilometers	(120 miles)
50	185	(115)
25	177	(110)
10	169	(105)
5	161	(100)

(f) Co-channel protection from base transmitters with high antennas. This paragraph applies only to base transmitter locations in the New York - Northeastern New Jersey urban area that utilize an antenna height of more than 152 meters (500 feet) above average terrain. The distance between the location of such a base transmitter and the applicable protected TV station location specified in this paragraph must equal or exceed the sum of the distance from the base transmitter location to the radio horizon in the direction of the specified location and 89 kilometers (55 miles - representing the distance from the main transmitter location of the TV station to its Grade B contour in the direction of the base transmitter). The distance to the radio horizon is calculated as follows:

$$d = \sqrt{17 \times h}$$

where d is the distance to the radio horizon in kilometers
h is the height of the antenna center of radiation above ground level in meters

Base Transmitter Frequency Range	Protected TV Station Location		
470-476 MHz	Washington, DC	38° 57'17"	77° 00'17"
476-482 MHz	Lancaster, PA	40° 15'45"	76° 27'49"

(g) The FCC may waive specific distance separation requirements of paragraphs (d) through (f) of this section if the applicant submits an engineering analysis which demonstrates that terrain effects and/or operation with less effective radiated power would satisfy the applicable minimum desired to undesired signal strength ratios at the Grade B contours of the protected TV stations. For this purpose, the Grade B contour of a TV station is deemed to be a circle with a 89 kilometer (55 mile) radius, centered on the protected TV station location, and along which the median TV signal field strength is 64 dBμV/m. In any showing intended to demonstrate compliance with the minimum desired to undesired signal ratio requirements of this section, all predicted field strengths must have been determined using the UHF TV propagation curves contained in Part 73 of this chapter.

§ 22.659 Effective radiated power limits.

The purpose of the rules in this section, which limit effective radiated power (ERP), is to reduce the likelihood that interference to television reception from public mobile operations on these channels will occur. The protected TV station locations specified in this section are the locations of record as of September 1974, and these do not change even though the TV stations may have been subsequently relocated.

(a) Maximum ERP. The ERP of base transmitters must not exceed 1000 Watts under any circumstances. The ERP of mobile transmitters must not exceed 60 Watts under any circumstances.

(b) Co-channel protection from base transmitters. The ERP of base transmitters in the New York - Northeastern New Jersey urban area must not exceed the limits in the tables referenced in paragraphs (b)(2) and (b)(3) of this section. The limits depend upon the height above average terrain of the base transmitter antenna and the distance between the base transmitter and the nearest protected TV station location in paragraph (b)(1) of this section.

(1) The protected TV station locations are as follows:

Base Transmitter Frequency Range	Protected TV Station Location		
470-476 MHz	Washington, DC	38° 57'17"	77° 00'17"
476-482 MHz	Lancaster, PA	40° 15'45"	76° 27'49"

Table E-8 - Maximum ERP (Watts) for Base Transmitters (HAAT 152 meters or less)

Distance to Protected TV Station in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)									
	15 (50)	30 (100)	46 (150)	61 (200)	76 (250)	91 (300)	107 (350)	122 (400)	137 (450)	152 (500)
209 (130)	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
201 (125)	1000	1000	1000	1000	1000	1000	1000	850	750	725
193 (120)	1000	1000	1000	1000	900	750	675	600	550	500
185 (115)	1000	1000	800	725	600	525	475	425	375	350
177 (110)	850	700	600	500	425	375	325	300	275	225
169 (105)	600	475	400	325	275	250	225	200	175	150
161 (100)	400	325	275	225	175	150	140	125	110	100
153 (95)	275	225	175	125	110	95	80	70	60	50
145 (90)	175	125	100	75	50					

See § 22.659(b)(2). This table is for antenna heights of 152 meters (500 feet) or less above average terrain. For antenna heights between those in the table, use the next higher antenna height. For distances between those in the table, use the next lower distance.

(2) Tables E-8 and E-9 apply to base transmitters in the New York - Northeastern New Jersey urban area that transmit on channels in the 476-482 MHz range.

Table E-9 - Maximum ERP (Watts) for Base Transmitters (HAAT more than 152 meters)

Distance to Protected TV Station in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)					
	152 (500)	305 (1000)	457 (1500)	610 (2000)	762 (2500)	914 (3000)
209 (130)	1000	447	219	117	71	46
193 (120)	500	209	95	50	30	19
177 (110)	225	91	35	19	11	8
161 (100)	100	30	10	5	3	2
153 (95)	50	13	5	3	2	1

See § 22.659(b)(2). This table is for antenna heights of more than 152 meters (500 feet) above average terrain. For intermediate values of height and/or distance, use linear interpolation to obtain the maximum permitted ERP.

Table E-10 - Maximum ERP (Watts) for Base Transmitters (HAAT 152 meters or less)

Distance to Protected TV Station in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)									
	15 (50)	30 (100)	46 (150)	61 (200)	76 (250)	91 (300)	107 (350)	122 (400)	137 (450)	152 (500)
261 (162)	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
257 (160)	1000	1000	1000	1000	1000	1000	1000	1000	1000	800
249 (155)	1000	1000	1000	1000	1000	875	775	700	625	575
241 (150)	1000	1000	950	775	725	625	550	500	450	400
233 (145)	850	750	650	575	500	440	400	350	320	300
225 (140)	600	575	465	400	350	300	275	250	230	225
217 (135)	450	400	335	300	255	240	200	185	165	150
209 (130)	350	300	245	200	185	160	145	125	120	100
201 (125)	225	200	170	150	125	110	100	90	80	75
193 (120)	175	150	125	105	90	80	70	60	55	50

See § 22.659(b)(3). This table applies for antenna heights of 152 meters (500 feet) or less above average terrain. For antenna heights between those in the table, use the next higher antenna height. For distances between those in the table, use the next lower distance.

(3) Tables E-10 and E-11 apply to base transmitters in the New York - Northeastern New Jersey urban area that transmit on channels in the 470-476 MHz range.

Table E-11 - Maximum ERP (Watts) for Base Transmitters (HAAT more than 152 meters)

Distance to Protected TV Station in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)					
	152 (500)	305 (1000)	457 (1500)	610 (2000)	762 (2500)	914 (3000)
261 (162)	1000	501	282	170	110	71
241 (150)	400	209	110	60	36	23
225 (140)	225	102	50	28	16	10
209 (130)	100	48	21	11	7	5
193 (120)	50	19	9	5	3	2

See § 22.659(b)(3). This table is for antenna heights of more than 152 meters (500 feet) above average terrain. For intermediate values of height and/or distance, use linear interpolation to obtain the maximum permitted ERP.

Table E-12 - Maximum ERP (Watts) for Base Transmitters

Distance to Protected TV Station in kilometers (miles)	Antenna Height Above Average Terrain in meters (feet)								
	30 (100)	46 (150)	61 (200)	76 (250)	91 (300)	107 (350)	122 (400)	137 (450)	152 (500)
108 (67)	1000	1000	1000	1000	1000	1000	1000	1000	1000
106 (66)	1000	1000	1000	1000	1000	1000	1000	1000	750
105 (65)	1000	1000	1000	1000	1000	1000	825	650	600
103 (64)	1000	1000	1000	1000	1000	775	625	500	400
101 (63)	1000	1000	1000	1000	440	400	350	320	300
100 (62)	1000	1000	1000	525	375	250	200	150	125
98 (61)	1000	700	450	250	200	125	100	75	50
97 (60)	1000	425	225	125	100	75	50		

See § 22.659(c)(2). This table applies to base transmitters in the New York - Northeastern New Jersey urban areas. This table is for antenna heights of 152 meters (500 feet) or less above average terrain. For antenna heights between those in the table, use the next higher antenna height. For distances between those in the table, use the next lower distance.

(c) Adjacent channel protection from base transmitters. The ERP of base transmitters must not exceed the limits in Table E-12. The limits depend upon the height above average terrain of the base transmitter antenna and the distance between the base transmitter and the nearest protected TV station location specified in paragraph (c)(1) of this section.

(1) The protected TV station locations are as follows:

Base Transmitter Frequency Range	Protected TV Station Location		TV Channel
470-476 MHz	Hanover, NH	43°42'30"	72°09'16" (15)
	Lancaster, PA	40°15'45"	76°27'49" (15)
476-482 MHz	Scranton, PA	41°10'58"	75°52'21" (16)
482-488 MHz	Hanover, NH	43°42'30"	72°09'16" (15)

(2) Table E-12 applies to base transmitters in the New York - Northeastern New Jersey urban area.

Subpart F - Rural Radiotelephone Service

§ 22.701 Scope.

The rules in this subpart govern the licensing and operation of stations and systems in the Rural Radiotelephone Service. The licensing and operation of these stations and systems is also subject to rules elsewhere in this part that apply generally to the Public Mobile Services. In case of conflict, however, the rules in this subpart govern.

§ 22.702 Eligibility.

Existing and proposed communications common carriers are eligible to hold authorizations to operate conventional central office, interoffice and rural subscriber stations in the Rural Radiotelephone Service. Only local exchange carriers that have been state certified to provide basic exchange telephone service (or others having state approval to provide such service) in the pertinent area are eligible to hold authorizations for Basic Exchange Telephone Radio Systems (BETRS). Subscribers are also eligible to hold authorizations to operate rural subscriber stations in the Rural Radiotelephone Service.

§ 22.703 Separate rural subscriber station authorization not required.

A separate authorization is not required for rural subscriber stations for which the effective radiated power does not exceed 60 Watts and for which FAA notification of construction or alteration of the antenna structure is not required (see criteria in § 17.7 of this chapter). Authority to operate such rural subscriber stations is conferred by the authorization of the central office or base station from which they receive service.

§ 22.705 Rural radiotelephone system configuration.

Stations in the Rural Radiotelephone Service are authorized to communicate as follows:

(a) Rural subscriber stations are authorized to communicate with and through the central office station(s) with which they are associated. However, where the establishment of a central office station in this service is not feasible, rural subscriber stations may be authorized to communicate with and through a base station in the Paging and Radiotelephone Service.

(b) Central office stations may communicate only with rural subscriber stations.

(c) Interoffice stations may communicate only with other interoffice stations.

§ 22.709 Rural radiotelephone service application requirements.

In addition to information required by Subparts B and D of this part, applications for authorization to operate a station in the Rural Radiotelephone Service must contain the applicable supplementary information described in this section.

(a) Interoffice stations. Applications for authority to operate a new interoffice station or to add transmitters or points of communications to an existing interoffice station must contain an exhibit demonstrating that the requested facilities would be used only for interconnecting central office stations and explaining why the use of alternative existing radio or wire facilities is not feasible.

(b) Technical information required. For each transmitter in the Rural Radiotelephone Service, the following information is required by FCC Form 401 Schedule B:

(1) Location description; city; county; state; geographical coordinates correct to ±1 second, the datum used (NAD 27 or NAD 83), site elevation above mean sea level, proximity to adjacent market boundaries and international borders;

(2) Antenna manufacturer, model number and type, antenna height to tip above ground level, the height of the center of radiation of the antenna above the average terrain, the height of the antenna center of radiation above the average elevation of the terrain along each of the 8 cardinal radials, antenna gain in the maximum lobe, the beamwidth of the maximum lobe of the antenna, a polar plot of the horizontal gain pattern of the antenna, the electric field polarization of the wave emitted by the antenna when installed as proposed;

(3) The center frequency of each channel requested, the maximum effective radiated power, the effective radiated power in each of the cardinal radial directions, any non-standard emission types to be used, including bandwidth and modulation type, the transmitter classification (e.g. central office), and the locations and call signs, if any, of any fixed points of communication.

(c) No landline facilities. Each application for a central office station must contain an exhibit showing that it is impracticable to provide the required communication service by means of landline facilities.

(d) Interference exhibit. Applications for central office, interoffice and relay stations must include an exhibit identifying co-channel facilities and demonstrating, in accordance with § 22.715 that the proposed station, if authorized, would not cause interference to the service of those co-channel facilities. This exhibit must:

(1) For UHF channels, identify each protected transmitter located within 108 kilometers (67 miles) of the proposed transmitter in directions in which the distance to the interfering contour is 76.4 kilometers (47.5 miles) or less, and within 178 kilometers (111 miles) of the proposed transmitter in directions in which the distance to the interfering contour exceeds 76.4 kilometers (47.5 miles); and identify each protected Basic Exchange Telephone Radio System central office transmitter in the Rural Radiotelephone Service within 231 kilometers (144 miles),.

(2) For VHF channels, identify each protected transmitter located within 135 kilometers (84 miles) of the proposed transmitter in directions in which the distance to the interfering contour is 93.3 kilometers (58 miles) or less, and within 178 kilometers (111 miles) of the proposed transmitter in directions in which the distance to the interfering contour exceeds 93.3 kilometers (58 miles).

(3) For each protected transmitter identified, show the results of distance calculations indicating that there would be no overlap of service and interfering contours, or alternatively, indicate that the licensee of or applicant for the protected transmitter and/or the applicant, as required, have agreed in writing to accept any interference resulting from operation of the proposed transmitter.

(e) Blocking probability. Applications for authority to operate basic exchange telephone radio systems (BETRS) that request more than two channel pairs must include an exhibit containing calculations showing that the number of channels requested is the minimum necessary to achieve the required grade of service (in terms of blocking probability), and that there will be adequate spectrum available in the area to meet realistic estimates of current and future demand for paging, two-way mobile and rural radiotelephone services (see § 22.719(c)). Applications for authority to operate new conventional rural radiotelephone systems that request more than two channel pairs must include a statement explaining why BETRS technology is not being proposed.

§ 22.711 Provision of information to applicants.

Licensees in the Rural Radio Service must, upon request by a bona-fide prospective applicant, provide to such applicant the information required by § 22.709 regarding the portion of the licensee's operations that potentially could affect, or be affected by, the prospective applicant's proposed station, if such information is not already on file with the FCC. This information must be provided to the bona-fide prospective applicant no later than 30 days after receipt of the information request.

§ 22.713 Construction period for rural radiotelephone stations.

The construction period for stations in the Rural Radiotelephone Service is 12 months.

§ 22.715 Technical channel assignment criteria for rural radiotelephone stations.

Channels are assigned in the Rural Radiotelephone Service using the procedures in § 22.567.

§ 22.717 Procedure for mutually exclusive applications in the Rural Radiotelephone Service.

Mutually exclusive applications in the Rural Radiotelephone Service, including those that are mutually exclusive with applications in the Paging and Radiotelephone Service, are processed in accordance with the rules in this section.

(a) Filing groups. Pending mutually exclusive applications are processed in filing groups. Mutually exclusive applications in a filing group are given concurrent consideration. The FCC may dismiss as defective (pursuant to § 22.128) any mutually exclusive application(s) whose filing date is outside of the date range for inclusion in the filing group. The types of filing groups used in day-to-day application processing are specified in paragraph (b)(3) of this section. A filing group is one of the following types:

(1) Renewal filing group. A renewal filing group comprises a timely-filed application for renewal of an authorization and all timely-filed mutually exclusive competing applications.

(2) Same-day filing group. A same-day filing group comprises all mutually exclusive applications whose filing date is the same day, which is normally the filing date of the first-filed application(s).

(3) Thirty-day notice and cut-off filing group. A thirty-day notice and cut-off filing group comprises mutually exclusive applications whose filing date is no later than 30 days after the date of the Public Notice listing the first-filed application(s) (according to the filing dates) as acceptable for filing.

(4) Window filing group. A window filing group comprises mutually exclusive applications whose filing date is within an announced filing window. An announced filing window is a period of time between and including two specific dates, which are the first and last dates on which applications (or amendments) for a particular purpose may be accepted for filing. In the case of a one-day filing window, the two dates are the same. The dates are made known to the public in advance.

(b) Procedures. Generally, the FCC may grant one application in a filing group of mutually exclusive applications and dismiss other application(s) in the filing group that are excluded by that grant, pursuant to § 22.128.

(1) Selection methods. In selecting the application to grant, the FCC may use comparative hearings.

(2) Dismissal of applications. The FCC may dismiss any application in a filing group that is defective or otherwise subject to dismissal under § 22.128, either before or after employing selection procedures.

(3) Type of filing group used. Except as otherwise provided in this part, the type of filing group used in processing of two or more mutually exclusive applications depends on the purpose(s) of the applications.

(i) If one of the mutually exclusive applications is a timely-filed application for renewal of an authorization, a renewal filing group is used.

(ii) If any mutually exclusive application filed on the earliest filing date is an application for modification and none of the mutually exclusive applications is a timely-filed application for renewal, a same-day filing group is used.

(iii) If all of the mutually exclusive applications filed on the earliest filing date are applications for initial authorization, a thirty-day notice and cut-off filing group is used.

(4) Disposition. If there is only one application in any type of filing group, the FCC may grant that application and dismiss without prejudice any applications excluded by that grant (i.e. not in the filing group). If there is more than one mutually exclusive application in a filing group, the FCC disposes of these applications as follows:

(i) Applications in a renewal filing group. All mutually exclusive applications in a renewal filing group are designated for comparative consideration in a hearing.

(ii) Applications in a thirty-day notice and cut-off filing group. For applications in a thirty-day notice and cut-off filing group, the FCC may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the FCC may designate all applications in the filing group for comparative consideration

in a hearing. In this event, the result of the hearing disposes all of the applications in the filing group.

(iii) Applications in a same-day filing group. If there are two or more mutually exclusive applications in a same-day filing group, the FCC may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the FCC may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes all of the applications in the filing group.

(iv) Applications in a window filing group. Applications in a window filing group are processed in accordance with the procedures for a thirty-day notice and cut-off filing group in paragraph (b)(4)(ii) of this section.

(c) Terminology. For the purposes of this section, terms have the following meanings:

(1) The "filing date" of an application is the date on which that application was received in a condition acceptable for filing or the date on which the most recently filed major amendment to that application was received, whichever is later, excluding major amendments in the following circumstances:

(i) The major amendment reflects only a change in ownership or control found by the FCC to be in the public interest; or,

(ii) The major amendment as received is defective or otherwise found unacceptable for filing.

(2) An "application for initial authorization" is:

(i) Any application requesting an authorization for a new system or station;

(ii) Any application requesting authorization for an existing station to operate on an additional channel, unless the additional channel is for paired two-way radiotelephone operation, is in the same frequency range as the existing channel(s), and will be operationally integrated with the existing channel(s) such as by trunking; or,

(iii) Any application requesting authorization for a new transmitter at a location more than 2 kilometers (1.2 miles) from any existing transmitters of the applicant licensee on the requested channel.

(3) An "application for modification" is any application other than an application for initial authorization or renewal.

§ 22.719 Additional channel policy for rural radiotelephone stations.

The rules in this section govern the processing of applications for central office stations that request a rural radiotelephone channel pair when the applicant has applied for or been granted an authorization for other rural radiotelephone channel pairs in the same area. The general policy of the FCC is to promote effective use of the spectrum by encouraging the use of spectrum-efficient technologies (i.e. BETRS) and by assigning the minimum number of channels necessary to provide service.

(a) Transmitters in same area. Any central office station transmitter on any channel pair listed in § 22.725 is considered to be in the same area as another central office station transmitter on any other channel pair listed in § 22.725 if the transmitting antennas are located within 10 kilometers (6.2 miles) of each other.

(b) Initial channel pairs. The FCC does not assign more than two channel pairs for new central office stations, unless there are more than eight rural subscriber stations to be served. Stations are considered to be new if there are no authorized transmitters on any channel listed in § 22.725 controlled by the applicant in the same geographic area.

(c) Additional channel pairs. Applications for central office station transmitters to be located in the same area as an authorized central office station controlled by the applicant, but to operate on a different channel pair(s), are considered as requests for additional channel pair(s) for the authorized central office station. The FCC may grant applications for additional channel pairs provided that the need for each additional channel pair (after the first two) is established and fully justified in terms of achieving the required grade of service (blocking probability), and the applicant demonstrates that there will still be adequate spectrum available in the area to meet realistic estimates of current and future demand for paging, two-way mobile and rural radiotelephone services. In the case of conventional rural radiotelephone central office stations, an explanation must be provided as to why BETRS technology is not being used instead of additional channel pairs.

CONVENTIONAL
RURAL RADIOTELEPHONE STATIONS

§ 22.725 Channels for conventional rural radiotelephone stations.

The following channels are allocated for paired assignment to transmitters that provide conventional rural radiotelephone service. These channels may be assigned for use by central office or rural subscriber stations as indicated, and interoffice stations. These channels may be assigned also for use by relay stations in systems where it would be impractical to provide rural radiotelephone service without the use of relay stations. All channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

VHF channels

central office	rural subscriber	central office	rural subscriber
152.03	158.49	152.57	157.83
152.06	158.52	152.60	157.86
152.09	158.55	152.63	157.89
152.12	158.58	152.66	157.92
152.15	158.61	152.69	157.95
152.18	158.64	152.72	157.98
152.21	158.67	152.75	158.01
152.51	157.77	152.78	158.04
152.54	157.80	152.81	158.07

UHF channels

454.025	459.025	454.350	459.350
454.050	459.050	454.375	459.375
454.075	459.075	454.400	459.400
454.100	459.100	454.425	459.425
454.125	459.125	454.450	459.450
454.150	459.150	454.475	459.475
454.175	459.175	454.500	459.500
454.200	459.200	454.525	459.525
454.225	459.225	454.550	459.550
454.250	459.250	454.575	459.575
454.275	459.275	454.600	459.600
454.300	459.300	454.625	459.625
454.325	459.325	454.650	459.650

(a) The channels listed in this section are also allocated for assignment in the Paging and Radiotelephone Service.

(b) In Puerto Rico and the Virgin Islands, channels in the 154.04-154.46 MHz and 161.40-161.85 MHz frequency ranges may be assigned to transmitters providing rural radiotelephone service; channels in these ranges are also allocated for assignment in the Intefnational Fixed Public and Aeronautical Fixed radio services.

(c) In Alaska, channels 42.40, 44.10, 44.20 and 45.90 MHz are allocated for assignment to transmitters providing rural radiotelephone service using meteor burst propagation modes, subject to the provisions of § 22.729.

§ 22.727 Power limits for conventional rural radiotelephone transmitters.

The transmitting power of transmitters operating on the channels listed in § 22.725 must not exceed the limits in this section.

(a) Maximum ERP. The effective radiated power (ERP) of central office and rural subscriber station transmitters must not exceed the applicable limits in this paragraph under any circumstances.

Frequency Range (MHz)	Maximum ERP (Watts)
152-153	1400
157-159	150
454-455	3500
459-460	150

(b) Basic power limit. Except as provided in paragraph (d) of this section, the ERP of central office station transmitters must not exceed 500 Watts.

(c) Height-power limits. Except as provided in paragraph (d) of this section, the ERP of central office station transmitters must not exceed the amount that would result in an average distance to the "service contour" of 41.6 kilometers (26 miles) for VHF channels or 30.7 kilometers (19 miles) for UHF channels. The average distance to the "service contour" is calculated by taking the arithmetic mean of the distances determined using the procedures specified in § 22.567 for the eight cardinal radial directions, excluding cardinal radial directions for which 90% or more of the distance so calculated is over water.

(d) Encompassed interfering contour areas. Central office station transmitters are exempt from the basic power and height-power limits of this section if the area within their interfering contours is totally encompassed by the interfering contours of operating co-channel central office station transmitters controlled by the same licensee. For the purpose of this paragraph, operating transmitters are authorized transmitters that are providing service to subscribers.

(e) Adjacent channel protection. The ERP of central office station transmitters must not exceed 500 Watts if they transmit on channel 454.025 MHz and are located less than 7 kilometers (4.3 miles) from any Private Radio Services station receiving on adjacent channel 454.000 MHz.

(f) Meteor burst stations. The transmitter output power for stations using meteor burst propagation modes must not exceed 2000 Watts for central office stations and 500 Watts for rural subscriber stations.

§ 22.729 Meteor burst propagation modes.

The rules in this section govern stations in this service that use meteor burst propagation modes to provide rural radiotelephone service in Alaska.

(a) Channel assignments. The channels 42.40 and 44.10 MHz may be assigned to central office stations and rural subscriber stations, respectively, on a primary basis. The channels 44.20 and 45.90 MHz may be assigned to central office and rural subscriber stations, respectively, on a secondary basis to Private Radio services stations using meteor burst

propagation modes.

(b) Transmitting power. The transmitter output power must not exceed 2000 Watts for central office stations and 500 Watts for rural subscriber stations.

(c) Station locations. Co-channel central office stations of different licensees must be at least 241 kilometers (150 miles) apart. A rural subscriber station and a central office station of different licensees must be at least 241 kilometers (150 miles) apart if the rural subscriber stations of the different licensees operate on the same channel. The FCC may waive the requirements of this paragraph if the affected users agree to a cooperative sharing arrangement.

(d) Emission type. Only type F1D emission is authorized.

(e) Bandwidth. The authorized bandwidth is 20 kHz.

(f) Station identification. Station identification is required only for the central office station.

(g) Interference. Stations authorized under the provisions of this section must not cause harmful interference to the service of stations in other radio services.

(h) Developmental authorization. Meteor burst communications systems may be authorized under developmental authorizations pursuant to § 22.419.

§ 22.731 Emission limitations.

Upon application for multichannel operation, the FCC may authorize emission bandwidths wider than those specified in § 22.357, provided that spectrum utilization is equal to or better than that achieved by single channel operation.

§ 22.733 Priority of service.

Within the Rural Radiotelephone Service, the channels listed in § 22.725 are intended primarily for use in rendition of public message service between rural subscriber and central office stations and to provide radio trunking facilities between central offices. The channels may also be used, however, for the rendition of private leased-line communication service provided that such usage would not reduce or impair the extent or quality of communication service that would be available, in the absence of private leased-line service, to the general public receiving or subsequently requesting public message service from a central office.

§ 22.737 Temporary fixed stations.

The FCC may, upon proper application therefor, authorize the construction and operation of temporary fixed stations. Temporary fixed stations are to be used as rural subscriber, interoffice, or central office stations when those stations are unavailable or when service from those stations is disrupted by storms or emergencies.

(a) Six month limitation. If it is necessary for a temporary fixed station to remain at the same location for more than six months, the licensee of that station must apply for authorization to operate the station at the specific location at least 30 days before the end of the six month period.

(b) International communications. Communications between the United States and Canada or Mexico must not be carried using a temporary fixed station without prior authorization from the FCC. Licensees desiring to carry such communications should apply sufficiently in advance to allow for the time necessary to coordinate with Canada or Mexico.

BASIC EXCHANGE TELEPHONE RADIO SYSTEMS

§ 22.757 Channels for basic exchange telephone radio systems.

The channels listed in § 22.725 are also allocated for paired assignment to transmitters in basic exchange telephone radio systems. In addition, the following channels are allocated for paired assignment to transmitters in basic exchange telephone radio systems. All channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

UHF channels - shared with Private Radio Services

rural subscriber	central office	rural subscriber	central office
816.2375	861.2375	816.1125	861.1125
817.2375	862.2375	817.1125	862.1125
818.2375	863.2375	818.1125	863.1125
819.2375	864.2375	819.1125	864.1125
820.2375	865.2375	820.1125	865.1125
816.2125	861.2125	816.0875	861.0875
817.2125	862.2125	817.0875	862.0875
818.2125	863.2125	818.0875	863.0875
819.2125	864.2125	819.0875	864.0875
820.2125	865.2125	820.0875	865.0875
816.1875	861.1875	816.0625	861.0625
817.1875	862.1875	817.0625	862.0625
818.1875	863.1875	818.0625	863.0625
819.1875	864.1875	819.0625	864.0625
820.1875	865.1875	820.0625	865.0625
816.1625	861.1625	816.0375	861.0375
817.1625	862.1625	817.0375	862.0375
818.1625	863.1625	818.0375	863.0375
819.1625	864.1625	819.0375	864.0375
820.1625	865.1625	820.0375	865.0375

816.1375 .... 861.1375	816.0125 .... 861.0125
817.1375 .... 862.1375	817.0125 .... 862.0125
818.1375 .... 863.1375	818.0125 .... 863.0125
819.1375 .... 864.1375	819.0125 .... 864.0125
820.1375 .... 865.1375	820.0125 .... 865.0125

(a) Channels are assigned in groups, as listed in this section.

(b) Channel groups in the 816-865 MHz frequency range are not assigned to Rural Radio Service stations located:

(1) Within 161 kilometers (100 miles) of the borders of the largest 54 MSAs (see § 22.909).

(2) North of Line A or East of Line C; or,

(3) Within 110 kilometers (68 miles) of the Mexican border.

(c) Channel groups in the 816-865 MHz frequency range are not assigned to central office stations located within 113 kilometers (70 miles) of another station authorized to operate on the same channels or on channels with center frequencies offset by 12.5 kHz.

(d) Technical parameters governing the use of these channels are contained in Subpart S of Part 90 of this chapter.

(e) The Common Carrier Bureau coordinates the availability of channels in the 816-865 MHz frequency range with the Private Radio Bureau.

§ 22.759 Power limit for BETRS.

The effective radiated power of central office and rural subscriber station transmitters used in basic exchange telephone radio systems must not exceed the limits in this section.

(a) Maximum ERP. The effective radiated power (ERP) of central office and rural subscriber station transmitters in BETRS must not exceed the applicable limits in this paragraph under any circumstances.

Frequency Range (MHz)	Maximum ERP (Watts)
152-153	1400
157-159	150
454-455	3500
459-460	150

(b) Height-power limit. The ERP of central office stations in BETRS must not exceed the amount calculated as follows:

$$ERP_W = 557{,}418 \div h_m^2$$

where ERP_w is the effective radiated power in Watts
h_m is the average (eight cardinal radial) antenna height above average terrain in meters

Subpart G - Air-ground Radiotelephone Service

§ 22.801 Scope.

The rules in this subpart govern the licensing and operation of public air-ground radiotelephone stations and systems. The licensing and operation of these stations and systems is also subject to rules elsewhere in this part that apply generally to the Public Mobile services. In case of conflict, however, the rules in this subpart govern.

§ 22.803 Air-ground application requirements.

In addition to information required by Subparts B and D of this part, applications for authorization to operate an air-ground station or system in the Air-ground Radiotelephone Service must contain the applicable supplementary information described in this section.

(a) Administrative information. The following information is required by FCC Form 401, Schedule B or C (as applicable).

(1) The number of transmitter sites for which authorization is requested.

(2) The call sign(s) of other facilities in the same area that are ultimately controlled by the real party in interest to the application.

(b) Technical information. The following information is required by FCC Form 401, Schedule B.

(1) Location description; city; county; state; geographical coordinates correct to ±1 second, the datum used (NAD 27 or NAD 83), site elevation above mean sea level, proximity to adjacent market boundaries and international borders;

(2) Antenna manufacturer, model number and type, antenna height to tip above ground level, antenna gain in the maximum lobe, the electric field polarization of the wave emitted by the antenna when installed as proposed;

(3) The center frequency of each channel requested, the maximum effective radiated power, any non-standard emission types to be used, including bandwidth and modulation type and the transmitter classification (e.g. ground or signaling).

GENERAL AVIATION AIR-GROUND STATIONS

§ 22.805 Channels for general aviation air-ground service.

The following channels are allocated for the provision of radiotelephone service to airborne mobile subscribers in general aviation aircraft. These channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

Signalling channel pair

ground	airborne mobile
454.675	459.675

Communication channel pairs

ground	airborne mobile	ground	airborne mobile
454.700	459.700	454.850	459.850
454.725	459.725	454.875	459.875
454.750	459.750	454.900	459.900
454.775	459.775	454.925	459.925
454.800	459.800	454.950	459.950
454.825	459.825	454.975	459.975

(a) Channel 454.675 MHz is assigned to each and every ground station, to be used only for automatically alerting airborne mobile stations of incoming calls.

(b) All airborne mobile channels are assigned for use by each and every airborne mobile station.

§ 22.809 Transmitting power limits.

The transmitting power of ground and airborne mobile transmitters operating on the channels listed in § 22.805 must not exceed the limits in this section.

(a) Ground station transmitters. The effective radiated power of ground stations must not exceed 100 Watts and must not be less than 50 Watts, except as provided in § 22.811.

(b) Airborne mobile transmitters. The transmitter power output of airborne mobile transmitters must not exceed 25 Watts and must not be less than 4 Watts.

§ 22.811 Idle tone.

Whenever a ground station transmitter authorized to transmit on any of the communications channels listed in § 22.805 is available for service but is not providing service, a modulated signal must be continuously transmitted on the communication channel assigned to that transmitter. While this modulated signal is transmitted, the transmitter power must be between 10 and 20 dB lower than the normal transmitting power.

§ 22.813 Technical channel pair assignment criteria.

The rules in this section establish technical assignment criteria for the channel pairs listed in § 22.805. These criteria are intended to provide substantial service volumes over areas that have significant local and regional general aviation activity, while maintaining the continuous nationwide in-route coverage of the original geographical layout.

(a) Distance separation for co-channel ground stations. The FCC may grant an application requesting assignment of a communication channel pair to a proposed ground transmitter only if the proposed antenna location is at least 800 kilometers (497 miles) from the antenna location of the nearest co-channel ground transmitter in the United States, its territories and possessions; and 1000 kilometers (621 miles) from the antenna location of the nearest co-channel ground transmitter in Canada.

(b) Dispersion. The FCC may grant an application requesting assignment of a communication channel pair to a proposed ground transmitter only if there are no more than five different communication channel pairs already assigned to ground transmitters with antenna locations within a 320 kilometer (199 mile) radius of the proposed antenna location.

§ 22.815 Construction period for general aviation ground stations.

The construction period (see § 22.142) for general aviation ground stations is 12 months.

§ 22.817 Additional channel policies.

The rules in this section govern the processing of applications for authority to operate a ground station transmitter on any ground station communication channel listed in § 22.805 when the applicant has applied or been granted an authorization for other ground station communication channels in the same area. The general policy of the FCC is to assign one ground station communication channel in an area to a carrier per application cycle, up to a maximum of six ground station communication channels per area. That is, a carrier must apply for one ground station communication channel, receive the authorization, construct the station, and notify the FCC of commencement of service before applying for an additional ground station communication channel in that area.

(a) Air-ground transmitters in same area. Any transmitter on any of the ground station channels listed in § 22.805 is considered to be in the same area as another transmitter on any ground station channel listed in § 22.805 if it is located less than 350 kilometers (217 miles) from that transmitter.

(b) Initial channel. The FCC will not assign more than one ground station communication channel for new ground stations. Ground stations are considered to be new if there are no authorized ground station transmitters on any channel listed in

§ 22.805 controlled by the applicant in the same area.

(c) Additional channel. Applications for ground transmitters to be located in the same area as an authorized ground station controlled by the applicant, but to operate on a different ground station communication channel, are considered as requesting an additional channel for the authorized station.

(d) Amendment of pending application. If the FCC receives and accepts for filing an application for a ground station transmitter to be located in the same area as a ground station transmitter proposed in a pending application previously filed by the applicant, but on a different ground station communication channel, the subsequent application is treated as a major amendment to change the technical proposal of the prior application. The filing date of any application so amended is the date the FCC received the subsequent application.

(e) Dismissal of premature applications for additional channel. If the FCC receives an application requesting an additional ground station communication channel for an authorized ground station prior to receiving notification that the station is providing service to subscribers on the authorized channel(s), the FCC may dismiss that application without prejudice.

(f) Dismissal of applications for seventh channel. If the FCC receives an application requesting an additional ground station communication channel for an authorized ground station which would, if granted, result in that station being assigned more than six ground station communication channels in the same area, the FCC may dismiss that application without prejudice.

§ 22.819 AGRAS compatibility requirement.

Except as provided in paragraph (a) of this section, stations transmitting on the channels listed in § 22.805 must operate in compliance with the technical and operational requirements contained in the document, "Technical Reference, Air-ground Radiotelephone Automated Service (AGRAS), System Operation and Equipment Characteristics", dated April 12, 1985.

(a) Until January 1, 1996, stations may continue to operate in compliance with the previous standard adopted in Docket 16073.

(b) Copies of the document referenced in this section may be obtained from the FCC's copying contractor.

§ 22.821 Authorization for airborne mobile stations.

An authorization separate from any ground station authorization is required for each airborne mobile station that operates on the channels listed in § 22.805. The operator of the airborne mobile station must apply for the authorization (FCC Form 409). The application must contain an affirmative representation that the applicant has made definite arrangements with a wireline common carrier for service and billing.

COMMERCIAL AVIATION AIR-GROUND SYSTEMS

§ 22.857 Channel plan for commercial aviation air-ground systems.

The 849-851 and 894-896 MHz frequency ranges are allocated for block assignment to nationwide air-ground systems providing radiotelephone service to passengers aboard commercial aircraft. These frequency ranges may also be used to provide service to persons in general aviation or other aircraft. Ground stations transmit on channels in the 849-851 MHz range. Airborne mobile stations transmit on channels in the 894-896 MHz range. Systems using these channels must conform to the channel plan described in this section.

(a) Channel blocks. The spectrum allocated for commercial aviation air-ground systems is divided into ten channel blocks, numbered 1 through 10. All ground stations in each geographical area must use the same channel block for communication with airborne mobile stations in flight, in accordance with § 22.859.

(1) Each channel block is subdivided into 6 control channels labeled P-1 through P-6, and 29 communications channels labeled C-1 through C-29.

(2) The authorized channel bandwidths are as follows:

(i) Each control channel has a bandwidth of 3.2 kHz.

(ii) Each communications channel has a bandwidth of 6 kHz.

(b) The center frequencies (in MegaHertz) of the communications and control channels are listed in Tables G-1 and G-2.

Table G-1 - Ground Station Channels

	CHANNEL BLOCK									
	10	9	8	7	6	5	4	3	2	1
C-1	849.0055	849.2055	849.4055	849.6055	849.8055	850.0055	850.2055	850.4055	850.6055	850.8055
C-2	849.0115	849.2115	849.4115	849.6115	849.8115	850.0115	850.2115	850.4115	850.6115	850.8115
C-3	849.0175	849.2175	849.4175	849.6175	849.8175	850.0175	850.2175	850.4175	850.6175	850.8175
C-4	849.0235	849.2235	849.4235	849.6235	849.8235	850.0235	850.2235	850.4235	850.6235	850.8235
C-5	849.0295	849.2295	849.4295	849.6295	849.8295	850.0295	850.2295	850.4295	850.6295	850.8295
C-6	849.0355	849.2355	849.4355	849.6355	849.8355	850.0355	850.2355	850.4355	850.6355	850.8355
C-7	849.0415	849.2415	849.4415	849.6415	849.8415	850.0415	850.2415	850.4415	850.6415	850.8415
C-8	849.0475	849.2475	849.4475	849.6475	849.8475	850.0475	850.2475	850.4475	850.6475	850.8475
C-9	849.0535	849.2535	849.4535	849.6535	849.8535	850.0535	850.2535	850.4535	850.6535	850.8535
C-10	849.0595	849.2595	849.4595	849.6595	849.8595	850.0595	850.2595	850.4595	850.6595	850.8595
C-11	849.0655	849.2655	849.4655	849.6655	849.8655	850.0655	850.2655	850.4655	850.6655	850.8655
C-12	849.0715	849.2715	849.4715	849.6715	849.8715	850.0715	850.2715	850.4715	850.6715	850.8715
C-13	849.0775	849.2775	849.4775	849.6775	849.8775	850.0775	850.2775	850.4775	850.6775	850.8775
C-14	849.0835	849.2835	849.4835	849.6835	849.8835	850.0835	850.2835	850.4835	850.6835	850.8835
C-15	849.0895	849.2895	849.4895	849.6895	849.8895	850.0895	850.2895	850.4895	850.6895	850.8895
C-16	849.0955	849.2955	849.4955	849.6955	849.8955	859.0955	850.2955	850.4955	850.6955	850.8955
C-17	849.1015	849.3015	849.5015	849.7015	849.9015	850.1015	850.3015	850.5015	850.7015	850.9015
C-18	849.1075	849.3075	849.5075	849.7075	849.9075	850.1075	850.3075	850.5075	850.7075	850.9075
C-19	849.1135	849.3135	849.5135	849.7135	849.9135	850.1135	850.3135	850.5135	850.7135	850.9135
C-20	849.1195	849.3195	849.5195	849.7195	849.9195	850.1195	850.3195	850.5195	850.7195	850.9195
C-21	849.1255	849.3255	849.5255	849.7255	849.9255	850.1255	850.3255	850.5255	850.7255	850.9255
C-22	849.1315	849.3315	849.5315	849.7315	849.9315	850.1315	850.3315	850.5315	850.7315	850.9315
C-23	849.1375	849.3375	849.5375	849.7375	849.9375	850.1375	850.3375	850.5375	850.7375	850.9375
C-24	849.1435	849.3435	849.5435	849.7435	849.9435	850.1435	850.3435	850.5435	850.7435	850.9435
C-25	849.1495	849.3495	849.5495	849.7495	849.9495	850.1495	850.3495	850.5495	850.7495	850.9495
C-26	849.1555	849.3555	849.5555	849.7555	849.9555	850.1555	850.3555	850.5555	850.7555	850.9555
C-27	849.1615	849.3615	849.5615	849.7615	849.9615	850.1615	850.3615	850.5615	850.7615	850.9615
C-28	849.1675	849.3675	849.5675	849.7675	849.9675	850.1675	850.3675	850.5675	850.7675	850.9675
C-29	849.1735	849.3735	849.5735	849.7735	849.9735	850.1735	850.3735	850.5735	850.7735	850.9735
P-6	849.1813	849.3813	849.5813	849.7813	849.9813	850.1813	850.3813	850.5813	850.7813	850.9813
P-5	849.1845	849.3845	849.5845	849.7845	849.9845	850.1845	850.3845	850.5845	850.7845	850.9845
P-4	849.1877	849.3877	849.5877	849.7877	849.9877	850.1877	850.3877	850.5877	850.7877	850.9877
P-3	849.1909	849.3909	849.5909	849.7909	849.9909	850.1909	850.3909	850.5909	850.7909	850.9909
P-2	849.1941	849.3941	849.5941	849.7941	849.9941	850.1941	850.3941	850.5941	850.7941	850.9941
P-1	849.1973	849.3973	849.5973	849.7973	849.9973	850.1973	850.3973	850.5973	850.7973	850.9973

Table G-2 - Airborne Mobile Station Channels

	CHANNEL BLOCK									
	10	9	8	7	6	5	4	3	2	1
C-1	894.0055	894.2055	894.4055	894.6055	894.8055	895.0055	895.2055	895.4055	895.6055	895.8055
C-2	894.0115	894.2115	894.4115	894.6115	894.8115	895.0115	895.2115	895.4115	895.6115	895.8115
C-3	894.0175	894.2175	894.4175	894.6175	894.8175	895.0175	895.2175	895.4175	895.6175	895.8175
C-4	894.0235	894.2235	894.4235	894.6235	894.8235	895.0235	895.2235	895.4235	895.6235	895.8235
C-5	894.0295	894.2295	894.4295	894.6295	894.8295	895.0295	895.2295	895.4295	895.6295	895.8295
C-6	894.0355	894.2355	894.4355	894.6355	894.8355	895.0355	895.2355	895.4355	895.6355	895.8355
C-7	894.0415	894.2415	894.4415	894.6415	894.8415	895.0415	895.2415	895.4415	895.6415	895.8415
C-8	894.0475	894.2475	894.4475	894.6475	894.8475	895.0475	895.2475	895.4475	895.6475	895.8475
C-9	894.0535	894.2535	894.4535	894.6535	894.8535	895.0535	895.2535	895.4535	895.6535	895.8535
C-10	894.0595	894.2595	894.4595	894.6595	894.8595	895.0595	895.2595	895.4595	895.6595	895.8595
C-11	894.0655	894.2655	894.4655	894.6655	894.8655	895.0655	895.2655	895.4655	895.6655	895.8655
C-12	894.0715	894.2715	894.4715	894.6715	894.8715	895.0715	895.2715	895.4715	895.6715	895.8715
C-13	894.0775	894.2775	894.4775	894.6775	894.8775	895.0775	895.2775	895.4775	895.6775	895.8775
C-14	894.0835	894.2835	894.4835	894.6835	894.8835	895.0835	895.2835	895.4835	895.6835	895.8835
C-15	894.0895	894.2895	894.4895	894.6895	894.8895	895.0895	895.2895	895.4895	895.6895	895.8895
C-16	894.0955	894.2955	894.4955	894.6955	894.8955	895.0955	895.2955	895.4955	895.6955	895.8955
C-17	894.1015	894.3015	894.5015	894.7015	894.9015	895.1015	895.3015	895.5015	895.7015	895.9015
C-18	894.1075	894.3075	894.5075	894.7075	894.9075	895.1075	895.3075	895.5075	895.7075	895.9075
C-19	894.1135	894.3135	894.5135	894.7135	894.9135	895.1135	895.3135	895.5135	895.7135	895.9135
C-20	894.1195	894.3195	894.5195	894.7195	894.9195	895.1195	895.3195	895.5195	895.7195	895.9195
C-21	894.1255	894.3255	894.5255	894.7255	894.9255	895.1255	895.3255	895.5255	895.7255	895.9255
C-22	894.1315	894.3315	894.5315	894.7315	894.9315	895.1315	895.3315	895.5315	895.7315	895.9315
C-23	894.1375	894.3375	894.5375	894.7375	894.9375	895.1375	895.3375	895.5375	895.7375	895.9375
C-24	894.1435	894.3435	894.5435	894.7435	894.9435	895.1435	895.3435	895.5435	895.7435	895.9435
C-25	894.1495	894.3495	894.5495	894.7495	894.9495	895.1495	895.3495	895.5495	895.7495	895.9495
C-26	894.1555	894.3555	894.5555	894.7555	894.9555	895.1555	895.3555	895.5555	895.7555	895.9555
C-27	894.1615	894.3615	894.5615	894.7615	894.9615	895.1615	895.3615	895.5615	895.7615	895.9615
C-28	894.1675	894.3675	894.5675	894.7675	894.9675	895.1675	895.3675	895.5675	895.7675	895.9675
C-29	894.1735	894.3735	894.5735	894.7735	894.9735	895.1735	895.3735	895.5735	895.7735	895.9735
P-6	894.1813	894.3813	894.5813	894.7813	894.9813	895.1813	895.3813	895.5813	895.7813	895.9813
P-5	894.1845	894.3845	894.5845	894.7845	894.9845	895.1845	895.3845	895.5845	895.7845	895.9845
P-4	894.1877	894.3877	894.5877	894.7877	894.9877	895.1877	895.3877	895.5877	895.7877	895.9877
P-3	894.1909	894.3909	894.5909	894.7909	894.9909	895.1909	895.3909	895.5909	895.7909	895.9909
P-2	894.1941	894.3941	894.5941	894.7941	894.9941	895.1941	895.3941	895.5941	895.7941	895.9941
P-1	894.1973	894.3973	894.5973	894.7973	894.9973	895.1973	895.3973	895.5973	895.7973	895.9973

§ 22.859 Geographical channel block layout.

Except as provided in paragraphs (a) and (b) of this section, ground station locations must be within 1.61 kilometers (one mile) of the locations listed in this paragraph. The channel block allotted for each location must be used to provide service to airborne mobile stations in flight and may be used to provide service to airborne mobile stations on ground.

Location	N. Latitude	W. Longitude	Channel Block
ALASKA			
Anchorage	61°11'06"	149°54'42"	8
Cordova	60°33'00"	145°43'00"	5
Ketchikan	55°21'20"	131°42'33"	5
Juneau	58°21'18"	134°34'30"	4
Sitka	57°03'30"	135°22'01"	7
Yakutat	59°30'30"	142°30'00"	8
ALABAMA			
Birmingham	33°23'24"	86°39'59"	2
ARIZONA			
Phoenix	33°35'39"	112°05'12"	4
Winslow	35°01'17"	110°43'02"	6
ARKANSAS			
Pine Bluff	34°10'56"	91°56'18"	8
CALIFORNIA			
Blythe	33°36'39"	114°42'24"	10
Eureka	40°42'59"	124°12'09"	8
Los Angeles	33°56'45"	118°23'03"	4
Oakland	37°51'12"	122°12'30"	1
San Francisco	37°41'15"	122°26'01"	6
Visalia	36°19'36"	119°23'22"	7
COLORADO			
Colorado Springs	38°44'39"	104°51'46"	8
Denver	39°46'45"	104°50'49"	1
Hayden	40°29'04"	107°13'08"	6
FLORIDA			
Miami	25°48'27"	80°16'30"	4
Orlando	28°26'53"	81°22'00"	2
Tallahassee	30°24'02"	84°21'18"	7
GEORGIA			
Atlanta	33°39'05"	84°25'54"	5
St. Simons Island	31°09'22"	81°23'14"	6
HAWAII			
Mauna Kapu	21°24'24"	158°06'02"	5
IDAHO			
Blackfoot	43°11'34"	112°20'57"	8
Caldwell	43°38'45"	116°38'44"	10
ILLINOIS			
Chicago	41°46'49"	87°45'20"	3
Kewanee	41°12'05"	89°57'33"	5
Schiller Park	41°57'18"	87°52'57"	2
INDIANA			
Fort Wayne	40°59'16"	85°11'31"	7
IOWA			
Des Moines	41°31'58"	93°38'54"	1
KANSAS			
Garden City	37°59'35"	100°54'04"	3
Wichita	37°37'24"	97°27'15"	7
KENTUCKY			
Fairdale	38°04'48"	85°47'33"	6
LOUISIANA			
Kenner	30°00'44"	90°13'30"	3
Shreveport	32°27'09"	93°49'38"	5
MASSACHUSETTS			
Boston	42°23'15"	71°01'03"	7
MICHIGAN			
Bellville	42°12'17"	83°29'09"	8
Flint	42°58'21"	83°44'22"	9
Sault Saint Marie	46°28'45"	84°21'31"	6
MINNESOTA			
Bloomington	44°51'30"	93°13'19"	9
MISSISSIPPI			
Meridian	32°19'10"	88°41'33"	9
MISSOURI			
Kansas City	39°18'37"	94°41'07"	6
St. Louis	38°42'45"	90°19'19"	4
Springfield	37°14'28"	93°22'54"	9
MONTANA			
Lewistown	47°02'56"	109°27'27"	5
Miles City	46°25'30"	105°52'30"	8
Missoula	47°01'05"	114°00'41"	3
NEBRASKA			
Grand Island	40°58'00"	98°19'11"	2
Ogallala	41°07'11"	101°45'37"	4
NEVADA			
Las Vegas	36°05'35"	115°10'25"	1
Reno	39°35'13"	119°55'52"	3
Tonopah	38°03'43"	117°13'24"	9
Winnemucca	41°00'39"	117°45'58"	4

NEW MEXICO			
Alamogordo	32°54'46"	105°56'41"	8
Albuquerque	35°03'05"	106°37'13"	10
Aztec	36°48'42"	107°53'48"	9
Clayton	36°27'29"	103°11'16"	5
NEW JERSEY			
Woodbury	39°50'01"	75°09'21"	3
NEW YORK			
E. Elmhurst	40°46'21"	73°52'42"	1
Schuyler	43°09'09"	75°07'50"	2
Staten Island	40°36'05"	74°06'35"	9
NORTH CAROLINA			
Greensboro	36°05'54"	79°56'42"	9
Wilmington	34°16'10"	77°54'24"	3
NORTH DAKOTA			
Dickinson	46°51'05"	102°47'35"	7
OHIO			
Pataskala	40°04'38"	82°41'57"	1
OKLAHOMA			
Warner	35°29'31"	95°18'25"	4
Woodward	36°24'42"	99°28'50"	9
OREGON			
Albany	44°38'24"	123°03'36"	5
Klamath Falls	42°06'30"	121°38'00"	2
Pendleton	45°35'45"	118°31'02"	7
PENNSYLVANIA			
Coraopolis	40°30'33"	80°13'27"	4
New Cumberland	40°11'30"	76°52'02"	8
SOUTH CAROLINA			
Charleston	32°54'10"	80°01'20"	4
SOUTH DAKOTA			
Aberdeen	45°27'21"	98°25'26"	6
Rapid City	44°02'36"	103°03'36"	5
TENNESSEE			
Elizabethton	36°26'04"	82°08'06"	7
Memphis	35°01'44"	89°56'15"	10
Nashville	36°08'44"	86°41'31"	3
TEXAS			
Austin	30°16'37"	97°49'34"	2
Bedford	32°50'19"	97°08'03"	1
Houston	29°54'37"	95°24'39"	9
Lubbock	33°37'06"	101°52'14"	7
Monahans	31°34'58"	102°54'18"	6
UTAH			
Abajo Peak	37°50'21"	109°27'42"	7
Delta	39°23'15"	112°30'44"	2
Escalante	37°45'19"	111°52'27"	5
Green River	38°57'54"	110°13'40"	3
Salt Lake City	40°39'11"	112°12'06"	1
VIRGINIA			
Arlington	38°52'55"	77°06'18"	6
WASHINGTON			
Seattle	47°26'08"	122°17'35"	4
Cheney	47°33'14"	117°43'35"	1
WEST VIRGINIA			
Charleston	38°19'47"	81°39'36"	2
WISCONSIN			
Stevens Point	44°33'06"	89°25'27"	8
WYOMING			
Riverton	43°03'37"	108°27'23"	9

(a) Carriers authorized to construct and operate air-ground radiotelephone systems on the channels listed in § 22.857 may also construct and operate low power ground stations designed to provide service to airborne mobile stations on the ground, provided that no interference is caused to service provided by ground stations located in accordance with the geographical channel block layout or with paragraph (b) of this section. The antenna location of each such low power ground station may be anywhere that is at least 483 kilometers (300 miles) from all antenna locations of ground stations using the same channel block(s) in accordance with the geographical channel block layout or with paragraph (b) of this section.

(b) Ground station locations may be more than 1.61 kilometers (one mile) from all of the locations listed in this section, provided that they are at least 885 kilometers (550 miles) from all antenna locations of ground stations using the same channel block(s) in accordance with the geographical channel block layout or with this paragraph.

§ 22.861 Emission limitations.

Any appropriate emission type may be used to provide air-ground radiotelephone service on the channels listed in § 22.857, provided that the emission limitations of this section are met.

(a) Emission mask. The emission mask described in this paragraph applies instead of those in § 22.359. The power of any emission in each of the adjacent channels must be at least 30 dB below the power of the total emission. The power of any emission in any of the channels other than the one being used and the adjacent channels must be at least 50 dB below the power of the total emission.

(b) Airborne mobile transmitters. The power of any emission in each of the adjacent channels must not exceed -130 dBm at any ground station receiver, assuming a 0 dBi receive antenna. The power of any emission in any of the channels other than the one being used and the adjacent channels must not exceed -148 dBm at any ground station receiver, assuming a 0 dBi receive antenna.

(c) Ground station transmitters. The effective radiated power (ERP) of any emission outside of the frequency ranges set forth in § 22.857 must not exceed -10 dBm. The ERP of any emission in each of the adjacent channels must not exceed +10 dBm. The ERP of any emission in any of the channels other than the one being used and the adjacent channels must not exceed -5 dBm.

(d) If an emission on any frequency outside of the authorized bandwidth causes harmful interference, the FCC may require greater attenuation of that emission than required in paragraph (a) of this section.

§ 22.863 Transmitter frequency tolerance.

Ground station transmitter frequencies must be maintained within 0.1 parts per million (ppm) of the channel reference or center frequencies. Doppler shift correction must be used to ensure that the frequencies of the signals of airborne mobile stations received at ground stations remain within 0.2 ppm of the channel reference or center frequencies.

§ 22.865 Automatic channel selection procedures.

Operation of stations using the channels listed in § 22.857 must be in accordance with the procedures in this section.

(a) A communications channel is not available for use by a ground station if it is already in use by another ground station at the same location. Ground station equipment must automatically determine whether channels are in use by other ground stations at the same location, and may employ radio frequency signal monitoring to do so. For example, a communications channel may be determined to be in use if the received signal power on that channel at the ground station exceeds -115 dBm, which, assuming a 0 dB gain 895 MHz receive antenna, corresponds to a field strength of approximately 19 dBμV/m. Ground stations may employ an alternative method of determining whether a communications channel is in use provided that such procedure is at least as reliable as radio frequency signal monitoring.

(b) Data indicating which communications channels are available for use are transmitted by ground stations on the assigned control channels.

(c) A call is originated when an airborne mobile station selects a communications channel based on the received data from ground stations and other factors, and transmits an identification code (which identifies the specific ground station from which service is requested) on the selected communications channel. The ground station from which service has been requested may then obtain any necessary billing information and complete the call.

(d) A ground station may not transmit on a communications channel unless it has received the proper identification code. After a ground station has begun to transmit on a communications channel, that channel is not available to ground stations other than the one from which service has been requested until the call is terminated.

(e) A call is terminated by the ground station when either a hang-up signal is transmitted by the airborne mobile station, or the signal from the airborne mobile station on the communications channel is lost for a period of 15 continuous seconds. The hang-up signal is the on-off keying (50% duty cycle) of an unmodulated carrier over a period of one second with pulse duration of 5 milliseconds. However, if all carriers authorized to operate air-ground systems using the channels listed in § 22.857 agree that an alternative hang-up signal and/or procedure would be more efficient or beneficial, such alternative hang-up signal and/or procedure may be used. The carriers must jointly give prior notification to the FCC if an alternative hang-up signal and/or procedure is used.

§ 22.867 Effective radiated power limits.

The effective radiated power (ERP) of ground and airborne stations operating on the channels listed in § 22.857 must not exceed the limits in this section.

(a) The ERP of airborne mobile station transmitters must not exceed 30 Watts.

(b) The ERP of ground station transmitters must not exceed 100 Watts.

(c) The ERP of low power ground station transmitters operating pursuant to paragraph (a) of § 22.859 must not exceed 1 Watt.

§ 22.869 Assignment of control channels.

The FCC selects and assigns exclusively one control channel to each commercial aviation air-ground licensee.

§ 22.871 Control channel transition period.

The rules in this section provide for a period of transition during which the experimental air-ground system operating on the channels listed in § 22.857 will be discontinued and replaced by a system operating in full compliance with the rules in this subpart. The experimental system may continue to exclusively use a 3.2 kHz control channel contained within the bandwidth of communications channel C-2 of each channel

block until September 9, 1996. After that date communications channel C-2 will be available for use by all carriers authorized to operate an air-ground system on the channels listed in § 22.857.

§ 22.873 Construction period for commercial aviation air-ground systems.

Construction of a new commercial aviation air-ground system is considered to be completed for the purpose of this section and § 22.142 when the number of ground stations specified in this section are constructed and operational.

(a) Stage I. At least 25 ground stations must be constructed and operational within 3 years. Licensees must notify the FCC (FCC Form 489) as soon as this requirement is met. Service to subscribers may commence as soon as the notification is mailed. If service to subscribers is not commenced at that time, the notification must contain a statement to this effect.

(b) Stage II. At least 50 ground stations must be constructed and operational within 5 years. Nationwide service to subscribers must commence within 5 years. Licensees must notify the FCC (FCC Form 489) as soon as these requirements are met.

§ 22.875 Commercial aviation air-ground system application requirements.

Existing and prospective common carriers may file applications for authority to construct and operate a new nationwide air-ground system on the channels listed in § 22.857 only during window filing periods that may be announced by the FCC in Public Notices. In addition to the requirements elsewhere in this part, such applications must contain the following exhibits:

(a) Written Agreement. A signed agreement between the applicant and at least one airline or airline organization, authorizing the applicant to provide air-ground service on its aircraft.

(b) Financial Qualifications. At the time of filing its application an applicant must demonstrate that it has either a firm financial commitment or available financial resources necessary to construct 50 ground stations and operate for one year after initiation of nationwide air-ground service its proposed air-ground system.

(1) The demonstration of commitment must include and be sufficient to cover the realistic and prudent estimated costs of construction of 50 ground stations, operation and other initial expenses for one year after initiation of nationwide air-ground service. The estimated costs, operation costs and other initial expenses must be itemized. The estimated costs must include the anticipated costs of construction of each ground station.

(2) The firm financial commitment required above must be obtained from a state or federally chartered bank or savings and loan association, or the financial affiliate or subsidiary of an equipment supplier, and must contain a statement that the lender:

(i) Has examined the financial condition of the applicant including audited financial statements, and has determined that the applicant is creditworthy;

(ii) That the lender is committed to providing a sum certain to the particular applicant;

(iii) That the lender's willingness to enter into the commitment is based solely on its relationship with the applicant; and

(iv) That the commitment is not in any way guaranteed by any entity other than the applicant.

(3) Applicants intending to rely on personal or internal resources must submit:

(i) Audited financial statements certified within one year of the date of the application, indicating the availability of sufficient net liquid assets to construct and operate the proposed air-ground system for one year.

(A) The auditors must be certified public accountants.

(B) Net liquid assets is considered to be the excess of current assets (readily converted to cash) over current liabilities. In order to demonstrate ready convertibility into cash, the identity, liquidity and value of listed assets must be demonstrated. Non-liquid assets can be relied on if the marketability of those assets is documented.

(ii) An audited balance sheet, current within 60 days of filing, which clearly shows the continued availability of sufficient net liquid assets to construct and operate the proposed air-ground system for one year after nationwide service begins.

(c) Service Plan. A service plan containing:

(1) A map or other description of the planned geographic coverage area, including air space over the continental United States, Alaska, Hawaii and other United States territories.

(2) A schedule for construction of 50 ground stations and provision of nationwide service to subscribers within 5 years from the grant of the initial authorization.

(3) A description of how the system will interconnect with the landline telephone network and be integrated with other air-ground systems, including a statement as to whether the system will be interconnected with international air-ground systems.

(d) Technical Exhibit. A technical description of the proposed system demonstrating compliance with all applicable technical requirements and describing how the proposed system would operate, if authorized. This exhibit must provide the following information:

(1) The number of ground stations to be used, their locations, and the type and quantity of equipment proposed for the system;

(2) A complete description of the procedures and data protocols to be used on the control channel;

(3) The modulation types to be used and their spectral characteristics;

(4) The effective radiated power and transmitter peak envelope power for all transmitters at each ground station location, and the effective radiated power of the airborne mobile stations;

(5) Antenna information as follows:

(i) For airborne mobile stations, the antenna type(s) to be used;

(ii) For ground stations, vertical and horizontal radiation patterns, antenna heights above ground level, antenna support structure heights above ground level, ground elevation above mean sea level and any relevant information (e.g. FAA approval) that may be helpful in determining whether ground station antennas require marking and lighting;

(6) Analytical data, including calculations, of potential interference within and without the spectrum for the air-ground system;

(7) A statement in compliance with the National Environmental Policy Act of 1969. See §§ 1.1301 through 1.1319 of this chapter.

Subpart H - Cellular Radiotelephone Service

§ 22.900 Scope.

The rules in this subpart govern the licensing and operation of cellular radiotelephone systems. Licensing and operation of these systems are also subject to rules elsewhere in this part that apply generally to the Public Mobile Services. In case of conflict, however, the rules in this subpart govern.

§ 22.901 Cellular service requirements and limitations.

Cellular system licensees must provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing, including roamers, while such subscribers are located within any portion of the authorized cellular geographic service area (see § 22.911) where facilities have been constructed and service to subscribers has commenced. A cellular system licensee may refuse or terminate service, however, subject to any applicable state or local requirements for timely notification, to any subscriber who operates a cellular telephone in an airborne aircraft in violation of § 22.925 or otherwise fails to cooperate with the licensee in exercising operational control over mobile stations pursuant to § 22.927.

(a) Service area information. Licensees must inform prospective subscribers of the area in which reliable service can be expected.

(b) Lack of capacity. If a licensee refuses a request for cellular service because of a lack of system capacity, it must report that fact to the FCC in writing, explaining how it plans to increase capacity.

(c) Dispatch service. Cellular systems must not offer or provide dispatch service.

(d) Alternative technologies and auxiliary services. Licensees of cellular systems may use alternative cellular technologies and/or provide auxiliary common carrier services, including personal communications services (as defined in Part 24 of this chapter) on the spectrum within their assigned channel block, provided that cellular service is available to subscribers whose mobile equipment conforms to the cellular system compatibility specification (see § 22.933).

(1) Licensees must perform or obtain an engineering analysis to ensure that interference to the service of other cellular systems will not result from the implementation of auxiliary services or alternative cellular technologies.

(2) Alternative technology and auxiliary service operations are exempt from the channeling requirements of § 22.905, the modulation requirements of § 22.915, the wave polarization requirements of § 22.367, the compatibility specification in § 22.933 and the emission limitations of §§ 22.357 and 22.917, except for emission limitations that apply to emissions outside the assigned channel block.

(e) Provision of resale capacity. Each cellular system licensee must permit unrestricted resale of its service, except that a licensee may apply resale restrictions to licensees of cellular systems on the other channel block in its market after the five year build-out period for licensees on the other channel block has expired.

§ 22.903 Conditions applicable to former Bell Operating Companies.

Ameritech Corporation, Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation, U.S. West, Inc., their successors in interest and affiliated entities (BOCs) may engage

in the provision of cellular service only in accordance with the conditions in this section, unless otherwise authorized by the FCC. BOCs may, subject to other provisions of law, have a controlling or lesser interest in or be under common control with separate corporations that provide cellular service only under the following conditions:

(a) Access to landline facilities. BOCs must not sell, lease or otherwise make available to the separate corporation any transmission facilities that are used in any way for the provision of its landline telephone services, except on a compensatory, arm's-length basis. Separate corporations must not own any facilities for the provision of landline telephone service. Access to landline exchange and transmission facilities for the provision of cellular service must be obtained by separate corporations on the same terms and conditions as those facilities are made available to other entities.

(b) Independence. Separate corporations must operate independently in the provision of cellular service. Each separate corporation must -

(1) Maintain its own books of account;

(2) Have separate officers;

(3) Employ separate operating, marketing, installation and maintenance personnel; and,

(4) Utilize separate computer and transmission facilities in the provision of cellular services.

(c) Research or development. Any research or development performed by BOCs for separate corporations, either separately or jointly, must be on a compensatory basis.

(d) Transactions. All transactions between the separate corporation and the BOC or its affiliates that involve the transfer, either direct or by accounting or other record entries, of money, personnel, resources, other assets or any things of value, shall be reduced to writing. A copy of any contract, agreement or other arrangement entered between such entities with regard to interconnection with landline network exchange and transmission facilities must be filed with the FCC within thirty days after the contract, agreement, or other arrangement is made. A copy of all other contracts, agreements or arrangements between such entities shall be kept available by the separate corporation for inspection upon reasonable request by the FCC. The provision shall not apply to any transaction governed by the provision of an effective state or federal tariff.

(e) Promotion. BOCs must not engage in the sale or promotion of cellular service on behalf of the separate corporation. However, this does not prohibit joint advertising or promotional efforts by the landline carrier and its cellular affiliate.

(f) Proprietary information. BOCs must not provide to any such separate corporation any customer proprietary information, unless such information is publicly available on the same terms and conditions.

(g) Provision of other Public Mobile services. Separate corporations may include, as part of their operations, the provision of other Public Mobile services.

§ 22.905 Channels for cellular service.

The following channels are allocated for block assignment in the Cellular Radiotelephone Service. All channels have a bandwidth of 40 kHz and are designated by their center frequencies in MegaHertz.

CHANNEL BLOCK A

416 communication channel pairs

base	mobile	base	mobile
869.040	824.040	890.010	845.010
869.070	824.070	890.040	845.040
|	|	|	|
|	|	|	|
879.990	834.990	891.480	846.480

21 control channel pairs

834.390	879.390
834.420	879.420
|	|
|	|
834.990	879.990

CHANNEL BLOCK B

416 communication channel pairs

base	mobile	base	mobile
880.020	835.020	891.510	846.510
880.050	835.050	891.540	846.540
|	|	|	|
|	|	|	|
889.980	844.980	893.970	848.970

21 control channel pairs

835.020	880.020
835.050	880.050
|	|
|	|
835.620	880.620

(a) Each channel block is assigned exclusively to one licensee for use in that licensee's cellular geographic service area (see § 22.911).

(b) Licensees may use any channel pair from the assigned channel block at any of their transmitter locations, subject to the prior coordination requirements of § 22.907.

§ 22.907 Coordination of channel usage.

Licensees in the Cellular Radiotelephone Service must coordinate, with the appropriate parties, channel usage at each transmitter location within 121 kilometers (75 miles) of any transmitter locations authorized to other licensees or proposed by tentative selectees or other applicants, except those with mutually exclusive applications.

(a) Licensees must cooperate and make reasonable efforts to resolve technical problems that may inhibit effective and efficient use of the cellular radio spectrum; however, licensees are not obligated to suggest extensive changes to or redesign other licensees' cellular systems. Licensees must make reasonable efforts to avoid blocking the growth of other cellular systems that are likely to need additional capacity in the future.

(b) If technical problems are addressed by an agreement or operating arrangement between the licensees that would result in a reduction of quality or capacity of either system, the licensees must notify the FCC by letter.

§ 22.909 Cellular markets.

Cellular markets are standard geographic areas used by the FCC for administrative convenience in the licensing of cellular systems. Cellular markets comprise Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs). All cellular markets and the counties they comprise are listed in Public Notice Report No. CL-92-40 "Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties", dated January 24, 1992, DA 92-109, 7 FCC Rcd 742 (1992).

(a) MSAs. Metropolitan Statistical Areas are 306 areas, including New England County Metropolitan Areas and the Gulf of Mexico Service Area (water area of the Gulf of Mexico, border is the coastline), defined by the Office of Management and Budget, as modified by the FCC.

(b) RSAs. Rural Service Areas are 428 areas, other than MSAs, established by the FCC.

§ 22.911 Cellular geographic service area.

The Cellular Geographic Service Area (CGSA) of a cellular system is the geographic area considered by the FCC to be served by the cellular system. The CGSA is the area within which cellular systems are entitled to protection and within which adverse effects for the purpose of determining whether a petitioner has standing are recognized.

(a) CGSA determination. The CGSA is the composite of the service areas of all of the cells in the system, excluding any area outside the cellular market boundary, except as provided in paragraph (c) of this section, and excluding any area within the CGSA of another cellular system. The service area of a cell is the area within its service area boundary (SAB). The distance to the SAB is calculated as a function of effective radiated power (ERP) and antenna center of radiation height above average terrain (HAAT), height above sea level (HASL) or height above mean sea level (HAMSL).

(1) Except as provided in paragraphs (a)(2) and (b) of this section, the distance from a cell transmitting antenna to its SAB along each cardinal radial is calculated as follows:

$$d = 2.531 \times h^{0.34} \times p^{0.17}$$

where d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

(2) For the cellular systems authorized to serve the Gulf of Mexico MSA, the distance from a cell transmitting antenna to its SAB along each cardinal radial is calculated as follows:

$$d = 6.895 \times h^{0.30} \times p^{0.15}$$

where d is the radial distance in kilometers
h is the radial antenna HAAT in meters
p is the radial ERP in Watts

(3) The value used for h in the formula in paragraph (a)(2) of this section must not be less than 8 meters (26 feet) HASL (or HAMSL, as appropriate for the support structure). The value used for h in the formula in paragraph (a)(1) of this section must not be less than 30 meters (98 feet) HAAT, except that for unserved area applications proposing a cell with an ERP not exceeding 10 Watts, the value for h used in the formula in paragraph (a)(1) of this section to determine the service area boundary for that cell may be less than 30 meters (98 feet) HAAT, but not less than 3 meters (10 feet) HAAT.

(4) The value used for p in the formulas in paragraphs (a)(1) and (a)(2) of this section must not be less than 0.1 Watt or 27 dB less than (1/500 of) the maximum ERP in any direction, whichever is more.

(5) Whenever use of the formula in paragraph (a)(1) of this section pursuant to the exception contained in paragraph (a)(3) of this section results in a calculated distance that is less than 5.4 kilometers (3.4 miles), the radial distance to the service area boundary is deemed to be 5.4 kilometers (3.4 miles).

(6) The distance from a cell transmitting antenna to the SAB

along any radial other than the eight cardinal radials is calculated by linear interpolation of distance as a function of angle.

NOTE to paragraph (a) of § 22.911: On May 13, 1994, the United States Court of Appeals for the District of Columbia Circuit instructed the FCC to vacate the provisions of old § 22.903(a), now § 22.911(a), insofar as they apply to cellular systems licensed to serve the Gulf of Mexico MSA (GMSA), pending reconsideration of an issue remanded to the FCC in that decision. See Petroleum Communications, Inc. v. Federal Communications Commission, No. 92-1670 and RVC Services, Inc., D/B/A Coastel Communications Company v. Federal Communications Commission, No. 93-1016, ___ F.2d ___, ___ (D.C. Cir. 1994). Accordingly, notwithstanding the provisions of § 22.911(a), until further notice, the authorized CGSAs of the cellular systems licensed to serve the GMSA are those which were authorized prior to January 11, 1993.

(b) Alternative CGSA determination. If a carrier believes that the method prescribed in paragraph (a) of this section produces a CGSA that departs significantly (±20% in the service area of any cell) from the geographical area where reliable cellular service is actually provided, the carrier may submit, as an exhibit to an application for modification of the CGSA (FCC Form 401), a depiction of what the carrier believes the CGSA should be. Such submissions must be accompanied by one or more supporting propagation studies using methods appropriate for the 800-900 MHz frequency range, including all supporting data and calculations, and/or by extensive field strength measurement data. For the purpose of such submissions, cellular service is considered to be provided in all areas, including "dead spots", between the transmitter location and the locus of points where the predicted or measured median field strength finally drops to 32 dBμV/m (i.e. does not exceed 32 dBμV/m further out). If, after consideration of such submissions, the FCC finds that adjustment to a CGSA is warranted, the FCC may grant the application.

(1) The alternative CGSA determination must define the CGSA in terms of distances from cell sites to cell SABs along the eight cardinal radials, with other points along the SAB determined in accordance with paragraph (a)(6) of this section. The distances used for the cardinal radials must be representative of the coverage within the 45° sectors, as depicted by the alternative CGSA determination.

(2) If an uncalibrated predictive model is used to depict the CGSA, the alternative CGSA determination must identify factors (e.g. terrain roughness or features) that could plausibly account for the difference between actual coverage and that defined by the formula in paragraph (a)(1) of this section. If actual measurements or a measurement-calibrated predictive model are used to depict the CGSA, and this fact is disclosed in the alternative CGSA determination, it is not necessary to offer an explanation of the difference between actual coverage and that defined by the formula in paragraph (a)(1) of this section. If the formula in paragraph (a)(1) of this section is clearly inapplicable for the cell(s) in question (e.g. for microcells), this should be disclosed in the alternative CGSA determination.

(3) The provision for alternative CGSA determinations was made in recognition that the formula in paragraph (a)(1) of this section is a general model that provides a reasonable approximation of coverage in most land areas, but may substantially under-predict or over-predict coverage in specific areas with unusual terrain roughness or features, and may be inapplicable for certain purposes, e.g. cells with a radial distance to the SAB less than 8 kilometers (5 miles). In such cases, alternative methods that utilize more specific models are appropriate. Accordingly, the FCC does not consider use of the formula in paragraph (a)(1) of this section with parameters outside of the limits in paragraphs (a)(3), (a)(4) and (a)(5) of this section or with data for radials other than the cardinal radials to be a valid alternative method for determining the CGSA of a cellular system.

(c) CGSA extension areas. SAB extensions (areas outside of the cellular market boundary, but within the service area as calculated using the methods of paragraph (a) of this section) are part of the CGSA only under the following circumstances:

(1) During the five year build-out period of the system in the cellular market containing the extension, the licensees of systems on the same channel block in adjacent cellular markets may agree that the portion of the service area of one system that extends into unserved area in the other system's cellular market is part of the CGSA of the former system.

(2) At the end of the five year build-out period of the system in the cellular market containing the extension, the portion of the service area that extends into unserved area in another cellular market becomes part of the CGSA, provided that the licensee of the system so extended files a system information update in accordance with § 22.947(c).

(3) For original systems in MSAs, extensions of the CGSA authorized by the FCC are part of the CGSA to the extent authorized.

(d) Protection afforded. Within the CGSA determined in accordance with this section, cellular systems are entitled to protection from co-channel and first-adjacent channel interference and from capture of subscriber traffic by adjacent systems on the same channel block.

(1) Licensees must cooperate in resolving co-channel and first-adjacent channel interference by changing channels used at specific cells or by other technical means.

(2) Protection from capture of subscriber traffic is applied and limited in accordance with the following:

(i) Subscriber traffic is captured if a SAB of one cellular

system overlaps the CGSA of another operating cellular system. Therefore, cellular licensees must not begin to operate any facility that would cause a SAB to overlap the existing CGSA of another cellular system on the same channel block, without first obtaining the written consent of the licensee of that system. However, cellular licensees may continue to operate existing facilities that produce a SAB overlapping a subsequently-authorized portion of the CGSA of another cellular system on the same channel block until the licensee of that system requests that the SAB be removed from its CGSA. Such request may be made directly to the licensee of the overlapping system or to the FCC. In the event such request is made, the licensee of the overlapping system must reduce the transmitting power or antenna height (or both) at the pertinent cell site as necessary to remove the SAB from the CGSA of the other system, unless a written consent from the licensee of the other system allowing the SAB to remain is obtained. Cellular licensees may enter into contracts with the licensees of other cellular systems on the same channel block to allow SABs to overlap CGSAs.

(ii) Cellular licensees are at most entitled to have a CGSA free of SABs from other cellular systems on the same channel block.

(e) Unserved areas. Unserved areas are areas outside of all existing CGSAs (on either of the channel blocks), to which the Communications Act of 1934, as amended, is applicable.

§ 22.912 Service area boundary extensions.

This section contains rules governing service area boundary (SAB) extensions. SAB extensions are areas outside of the cellular market boundary, but within the service area as calculated using the methods of § 22.911(a). Cellular systems must be designed to comply with the rules in this section. Applications proposing systems that would not comply with the rules in this section are defective. Service within SAB extensions is not protected from interference or capture under § 22.911(d) unless and until the area within the SAB extension becomes a part of the cellular geographic service area (CGSA) in accordance with § 22.911(c).

(a) De minimis extensions. Except as restricted in paragraph (d) of this section, SABs may extend into adjacent cellular markets if such extensions are de minimis, are demonstrably unavoidable for technical reasons of sound engineering design, and do not extend into the CGSA of any other licensee's cellular system on the same channel block (unless the licensee of such other system consents to the extension) or into any adjacent cellular market on a channel block for which the five year build-out period has expired.

(b) Contract extensions. Except as restricted in paragraph (d) of this section, licensees of cellular systems on the same channel block in adjacent cellular markets may, at any time, enter into contracts with applicants or other licensees to allow SAB extensions into their CGSA only (not into unserved area). Except as restricted in paragraph (d) of this section, licensees of the first authorized cellular systems on the same channel block in adjacent cellular markets may agree to allow SAB extensions into their CGSA and/or unserved area in their cellular markets during the five year build-out period of the market into which the SAB extends.

(c) Same applicant/licensee. Except as restricted in paragraph (d) of this section, licensees of cellular systems that are also an applicant or licensee on the same channel block in adjacent cellular markets may, at any time, allow or propose SAB extensions from their adjacent market system into their CGSA only (not into unserved area). Except as restricted in paragraph (d) of this section, licensees of the first authorized cellular systems that are also an applicant or licensee on the same channel block in adjacent cellular markets may allow or propose SAB extensions from their adjacent market system into their CGSA and/or unserved area in their cellular markets during the five year build-out period of the market into which the SAB extends.

(d) Unserved area systems. Phase I initial cellular applications must not propose SAB extensions. Phase I sole major modification applications and Phase II applications may propose SAB extensions, subject to the conditions in this section.

§ 22.913 Effective radiated power limits.

The effective radiated power (ERP) of transmitters in the Cellular Radiotelephone Service must not exceed the limits in this section.

(a) Maximum ERP. The effective radiated power (ERP) of base transmitters and cellular repeaters must not exceed 500 Watts. The ERP of mobile transmitters and auxiliary test transmitters must not exceed 7 Watts.

(b) Height-power limit. The ERP of base transmitters must not exceed the amount that would result in an average distance to the service area boundary of 79.1 kilometers (49 miles) for cellular systems authorized to serve the Gulf of Mexico MSA and 40.2 kilometers (25 miles) for all other cellular systems. The average distance to the service area boundary is calculated by taking the arithmetic mean of the distances determined using the procedures specified in § 22.911 for the eight cardinal radial directions.

(c) Coordination exemption. Licensees need not comply with the height-power limit in paragraph (b) of this section if the proposed operation is coordinated with the licensees of all affected cellular systems on the same channel block within 121 kilometers (75 miles) and concurrence is obtained.

§ 22.915 Modulation requirements.

Cellular systems must be capable of providing service using

the types of modulation described in the cellular system compatibility specification.

(a) Non-voice modulating signals. Modulating signals other than voice signals, such as data signals, may be transmitted, provided the resulting modulated emission exhibits spectral characteristics not exceeding those resulting from voice modulation.

(b) Modulation levels. The levels of the modulating signals must be set to the values specified in this paragraph, and must be maintained within ±10% of those values.

(1) The instantaneous frequency deviation resulting from the main modulating signal must be ±12 kHz.

(2) The instantaneous frequency deviation resulting from the supervisory audio tones must be ±2 kHz.

(3) The instantaneous frequency deviation resulting from the signaling tone must be ±8 kHz.

(4) The instantaneous frequency deviation resulting from wideband data signals must be ±8 kHz.

(c) Deviation limitation circuitry. Cellular transmitters must be equipped with circuitry that automatically prevents modulation levels for voice transmissions from exceeding the limits specified in this section.

(d) Audio filter characteristics. Except as provided in § 22.917, radiotelephony signals applied to the modulator from the modulation limiter must be attenuated as a function of frequency as specified in this paragraph.

(1) For mobile stations, these signals must be attenuated, relative to the level at 1 kHz, as follows:

(i) In the frequency ranges of 3.0 to 5.9 kHz and 6.1 to 15.0 kHz, signals must be attenuated by at least 40 log (f÷3) dB, where f is the frequency of the signal in kHz.

(ii) In the frequency range of 5.9 to 6.1 kHz, signals must be attenuated at least 35 dB.

(iii) In the frequency range above 15 kHz, signals must be attenuated at least 28 dB.

(2) For base stations, these signals shall be attenuated, relative to the level at 1 kHz, as follows:

(i) In the frequency range of 3 to 15 kHz, signals must be attenuated by at least 40 log (f÷3) dB, where f is the frequency of the signal in kHz.

(ii) In the frequency range above 15 kHz, signals must be attenuated by at least 28 dB.

(3) Filtering is not required for the supervisory audio tones, signaling tones or wideband data signals.

§ 22.917 Emission limitations for cellular.

The rules in this section govern the spectral characteristics of emissions in the Cellular Radiotelephone Service.

(a) Analog radiotelephony emissions. F3E emissions must be used only on the communication channels.

(b) F3E/F3D emission mask for use with audio filter. For F3E and F3D emissions, except as provided in paragraph (c) of this section, the mean power of emissions must be attenuated below the mean power of the unmodulated carrier wave (P) as follows:

(1) On any frequency removed from the carrier frequency by more than 20 kHz but not more than 45 kHz:

at least 26 dB;

(2) On any frequency removed from the carrier frequency by more than 45 kHz, up to the first multiple of the carrier frequency:

at least 60 dB or 43 + 10 log P dB, whichever is the lesser attenuation.

(c) Alternative F3E/F3D emission mask. For F3E and F3D emissions, transmitters may comply with the emission limitations in this paragraph in lieu of compliance with paragraph (b) of this section and the audio filter requirement of § 22.915.

(1) The mean power of any emission removed from the carrier frequency by a displacement frequency (f_d in kHz) must be attenuated below the mean power of the unmodulated carrier (P) as follows:

(i) On any frequency removed from the carrier frequency by more than 12 kHz but not more than 20 kHz:

at least 117 log (f_d÷12) dB;

(ii) On any frequency removed from the carrier frequency by more than 20 kHz, up to the first multiple of the carrier frequency:

at least 100 log (f_d÷11) dB or 60 dB or 43 + 10 log P dB, whichever is the lesser attenuation;

(2) For mobile stations, modulating signals other than the supervisory audio tone in the frequency range of 5.9 to 6.1 kHz must be attenuated, relative to the level at 1 kHz, at least 35 dB.

(d) F1D emission mask. For F1D emissions, the mean

power of emissions must be attenuated below the mean power of the unmodulated carrier (P) as follows:

(1) On any frequency removed from the carrier frequency by more than 20 kHz but not more than 45 kHz:

at least 26 dB;

(2) On any frequency removed from the carrier frequency by more than 45 kHz but not more than 90 kHz:

at least 45 dB;

(3) On any frequency removed from the carrier frequency by more than 90 kHz, up to the first multiple of the carrier frequency:

at least 60 dB or 43 + 10 log P dB, whichever is the lesser attenuation.

(e) Out of band emissions. The mean power of emissions must be attenuated below the mean power of the unmodulated carrier (P) on any frequency twice or more than twice the fundamental frequency by:

at least 43 + 10 log P dB.

(f) Mobile emissions in base frequency range. The mean power of any emissions appearing in the base station frequency range from cellular mobile transmitters operated must be attenuated to a level not to exceed -80 dBm at the transmit antenna connector.

(g) Interference from spurious emissions. If any emission from a transmitter operating in this service results in interference to users of another radio service, the FCC may require a greater attenuation of that emission than specified in this section.

(h) Measurement procedure. The following spectrum analyzer bandwidth settings should be used for measurement of spurious emissions:

(1) When operating in the radiotelephony mode or the supervisory audio tone mode:

(i) For any emission not more than 45 kHz removed from the carrier frequency: 300 Hz;

(ii) For any emission more than 45 kHz removed from the carrier frequency: 30 kHz.

(2) When operating in the wideband data mode or the signaling tone mode:

(i) For any emission not more than 60 kHz removed from the carrier frequency: 300 Hz;

(ii) For any emission more than 60 kHz removed from the carrier frequency: 30 kHz.

§ 22.919 Electronic serial numbers.

The Electronic Serial Number (ESN) is a 32 bit binary number that uniquely identifies a cellular mobile transmitter to any cellular system.

(a) Each mobile transmitter in service must have a unique ESN.

(b) The ESN host component must be permanently attached to a main circuit board of the mobile transmitter and the integrity of the unit's operating software must not be alterable. The ESN must be isolated from fraudulent contact and tampering. If the ESN host component does not contain other information, that component must not be removable, and its electrical connections must not be accessible. If the ESN host component contains other information, the ESN must be encoded using one or more of the following techniques:

(1) Multiplication or division by a polynomial;

(2) Cyclic coding;

(3) The spreading of ESN bits over various non-sequential memory locations.

(c) The ESN must be factory set and must not be alterable, transferable, removable or otherwise able to be manipulated. Cellular mobile equipment must be designed such that any attempt to remove, tamper with, or change the ESN chip, its logic system, or firmware originally programmed by the manufacturer will render the mobile transmitter inoperative.

§ 22.923 Cellular system configuration.

Mobile stations communicate with and through base transmitters only. Base transmitters communicate with mobile stations directly or through cellular repeaters. Auxiliary test stations may communicate with base or mobile stations for the purpose of testing equipment.

§ 22.925 Prohibition on airborne operation of cellular telephones.

Cellular telephones installed in or carried aboard airplanes, balloons or any other type of aircraft must not be operated while such aircraft are airborne (not touching the ground). When any aircraft leaves the ground, all cellular telephones on board that aircraft must be turned off. The following notice must be posted on or near each cellular telephone installed in any aircraft:

"The use of cellular telephones while this aircraft is airborne is prohibited by FCC rules, and the violation of this rule could result in suspension of service and/or a

fine. The use of cellular telephones while this aircraft is on the ground is subject to FAA regulations."

§ 22.927 Responsibility for mobile stations.

Mobile stations that are subscribers in good standing to a cellular system, when receiving service from that cellular system, are considered to be operating under the authorization of that cellular system. Cellular system licensees are responsible for exercising effective operational control over mobile stations receiving service through their cellular systems. Mobile stations that are subscribers in good standing to a cellular system, while receiving service from a different cellular system, are considered to be operating under the authorization of such different system. The licensee of such different system is responsible, during such temporary period, for exercising effective operational control over such mobile stations as if they were subscribers to it.

§ 22.929 Application requirements for the Cellular Radiotelephone Service.

In addition to information required by Subparts B and D of this part, applications for authorization in the Cellular Radiotelephone Service must contain the applicable supplementary information described in this section. Initial applications for new cellular systems must also comply with § 22.953.

(a) Administrative information. The following information is required either by FCC Form 401, Schedule C, or as an exhibit.

(1) The number of transmitter sites for which authorization is requested;

(2) The call sign(s) of other facilities in the same area that are ultimately controlled by the real party in interest to the application;

(3) If the application involves a service area boundary (SAB) extension (see § 22.912), a statement as to whether the five year build-out period for the system on the relevant channel block in the market into which the SAB extends has elapsed, and whether the SAB extends into any unserved area in that market.

(b) Technical information. The following information is required by FCC Form 401, Schedule C.

(1) Location description; city; county; state; geographical coordinates correct to ±1 second, the datum used (NAD 27 or NAD 83), site elevation above mean sea level, proximity to adjacent market boundaries and international borders;

(2) Antenna manufacturer, model number and type, antenna height to tip above ground level, the height of the center of radiation of the antenna above the average terrain, the height of the antenna center of radiation above the average elevation of the terrain along each of the 8 cardinal radials, antenna gain in the maximum lobe, the beamwidth of the maximum lobe of the antenna, a polar plot of the horizontal gain pattern of the antenna, the electric field polarization of the wave emitted by the antenna when installed as proposed;

(3) The channel block requested, the maximum effective radiated power, the effective radiated power in each of the cardinal radial directions.

(c) Maps. If the application proposes a change in the CGSA, it must include full size and reduced maps, and supporting engineering, as described in § 22.953(a)(5)(i) through (iii).

§ 22.933 Cellular system compatibility specification.

Except as provided in § 22.901(d), equipment used in the Cellular Radiotelephone Service must be designed in compliance with the technical specifications for compatibility of mobile and base stations in the Cellular Radiotelephone Service contained in "Cellular System Mobile Station-Land Station Compatibility Specification" (April 1981 Ed.), Office of Engineering and Technology Bulletin No. 53. This bulletin is contained in Appendix D to the Report and Order in CC Docket No. 79-318, and was published in the Federal Register of May 21, 1981. Copies may be obtained from the FCC's copying contractor. Special operational features that have been developed by joint industry consensus through the Telecommunications Industry Association (TIA) and established as a TIA standard may be activated at the option of the cellular licensee, provided that the compatibility of equipment within the Cellular Radiotelephone Service as specified in OET Bulletin No. 53 is not adversely affected.

§ 22.935 Procedures for comparative renewal proceedings.

The procedures in this section apply to comparative renewal proceedings in the Cellular Radiotelephone Service.

(a) If one or more applications competing with an application for renewal of a cellular authorization are filed, the renewal applicant must file with the FCC an original and four copies of its renewal expectancy showing. This filing must be submitted no later than 60 days after the date of the Public Notice listing as acceptable for filing the renewal application and the competing applications.

(b) Interested parties may file petitions to deny any of the mutually exclusive applications. Any such petitions to deny must be filed no later than 30 days after the date that the renewal applicant submitted its renewal expectancy showing. Applicants may file replies to any petitions to deny that are filed. Any such replies must be filed no later than 15 days after the date that the petition(s) to deny were filed. No further pleadings

will be accepted.

(c) In most instances, the renewal application and any competing applications will be designated for a two-step hearing procedure. An Administrative Law Judge (Presiding Judge) will conduct a threshold hearing (step one), in which both the licensee and the competing applicants will be parties, to determine whether the renewal applicant deserves a renewal expectancy. If the order designating the applications for hearing specifies any basic qualifying issues against the licensee, those issues will be tried in this threshold hearing. If the Presiding Judge determines that the renewal applicant is basically qualified and due a renewal expectancy, the competing applicants will be found ineligible for further consideration and their applications will be denied. If the Presiding Judge determines that the renewal applicant does not merit a renewal expectancy but is otherwise qualified, then all of the applications will be considered in a comparative hearing (step two).

(d) Any competing applicant may request a waiver of the threshold hearing (step one), if such applicant demonstrates that its proposal so far exceeds the service already being provided that there would be no purpose in making a threshold determination as to whether the renewal applicant deserved a renewal expectancy vis-a-vis such a competing applicant. Any such waiver request must be filed at the time the requestor's application is filed. Petitions opposing such waiver requests may be filed. Any such petitions must be filed no later than 30 days after the date that the renewal applicant submitted its renewal expectancy showing. Replies to any petitions opposing such waiver requests may be filed. Any such replies must be filed no later than 15 days after the date that the petition(s) were filed. No further pleadings will be accepted. Any waiver request submitted pursuant to this paragraph will be acted upon prior to designating the applications for hearing. If a request to waive the threshold hearing (step one) is granted, the renewal expectancy issue will be designated as part of the comparative hearing (step two), and will remain the most important comparative factor in deciding the case, as provided in § 22.940(a).

(e) If the Presiding Judge issues a ruling in the threshold hearing (step one) that denies the licensee a renewal expectancy, all of the applicants involved in the proceeding will be allowed to file direct cases no later than 90 days after the release date of the Presiding Judge's ruling. Rebuttal cases must be filed no later than 30 days after the date that the direct cases were filed.

(f) The Presiding Judge shall use the expedited hearing procedures delineated in this paragraph in both threshold (step one) and comparative (step two) hearings conducted in comparative cellular renewal proceedings.

(1) The Presiding Judge will schedule a first hearing session as soon as practicable after the date for filing rebuttal evidence. This first session will be an evidentiary admission session at which each applicant will identify and offer its previously circulated direct and rebuttal exhibits, and each party will have an opportunity to lodge objections.

(2) After accepting the exhibits into evidence, the Presiding Judge will entertain motions to cross-examine and rule whether any sponsoring witness needs to be produced for cross-examination. Determination of what, if any, cross-examination is necessary is within the sound judicial discretion of the Presiding Judge, the prevailing standard being whether the person requesting cross-examination has persuasively demonstrated that written evidence is ineffectual to develop proof. If cross-examination is necessary, the Presiding Judge will specify a date for the appearance of all witnesses. In addition, if the designation order points out an area where additional underlying data is needed, the Presiding Judge will have the authority to permit the limited use of discovery procedures. Finally, the Presiding Judge may find that certain additional testimony or cross-examination is needed to provide a complete record for the FCC. If so, the Presiding Judge may schedule a further session.

(3) After the hearing record is closed, the Presiding Judge may request Proposed Findings of Fact and Conclusions of Law to be filed no later than 30 days after the final hearing session. Replies are not permitted except in unusual cases and then only with respect to the specific issues named by the Presiding Judge.

(4) The Presiding Judge will then issue an Initial Decision, preferably within 60 days of receipt of the last pleadings. If mutually exclusive applications are before the Presiding Judge, the Presiding Judge will determine which applicant is best qualified. The Presiding Judge may also rank the applicants in order of merit if there are more than two.

(5) Parties will have 30 days in which to file exceptions to the Initial Decision. The Common Carrier Bureau has authority to determine, at the time of designation for hearing, that such exceptions will be taken directly to the FCC rather than to the Review Board.

§ 22.936 Dismissal of applications in cellular renewal proceedings.

Any applicant that has filed an application in the Cellular Radiotelephone Service that is mutually exclusive with an application for renewal of a cellular authorization (competing application), and seeks to resolve the mutual exclusivity by requesting dismissal of its application, must obtain the approval of the FCC.

(a) If a competing applicant seeks to dismiss its application prior to the Initial Decision stage of the hearing on its application, it must submit to the FCC a request for approval of the dismissal of its application, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(1) A certification that neither the petitioner nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the withdrawal or dismissal of the application, except that this provision does not apply to dismissal or withdrawal of applications pursuant to bona fide merger agreements;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the withdrawal or dismissal of the application.

(b) In addition, within 5 days of the filing date of the applicant or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application; and

(2) The terms of any oral agreement relating to the withdrawal or dismissal of the application.

(c) For the purposes of this section:

(1) Affidavits filed pursuant to this section must be executed by the filing party, if an individual, a partner having personal knowledge of the facts, if a partnership, or an officer having personal knowledge of the facts, if a corporation or association.

(2) Applications are deemed to be pending before the FCC from the time the application is filed with the FCC until such time as an order of the FCC granting, denying or dismissing the application is no longer subject to reconsideration by the FCC or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application for which reimbursement is sought.

(4) "Other consideration" consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

§ 22.937 Demonstration of financial qualifications.

Except as provided in paragraphs (g) and (h) of this section, each applicant for a new cellular system must demonstrate that it has, at the time the application is filed, either a separate market-specific firm financial commitment or available financial resources sufficient to construct and operate for one year the proposed cellular system. Each application for assignment of license or consent to transfer of control must demonstrate the financial ability of the proposed assignee or transferee to acquire and operate the facilities.

(a) Estimated costs. The demonstration required by this section must include a realistic and prudent estimate of the costs of construction, operating and other initial expenses for one year.

(b) Source of financing. The firm financial commitment must be obtained from a state or federally chartered bank or savings and loan association, another recognized financial institution, or the financial arm of a capital equipment supplier. The firm financial commitment may be contingent upon the applicant's obtaining an authorization.

(c) Lender's statement. The firm financial commitment must contain a statement that:

(1) The lender has examined the financial condition of the applicant, including audited financial statements if applicable, and has determined that the applicant is creditworthy;

(2) The lender has examined the financial viability of each proposal for which the applicant intends to use the commitment;

(3) The lender is committed to providing a sum certain to the particular applicant;

(4) The lender's willingness to enter into the commitment is based solely on its relationship with the applicant; and,

(5) The commitment is not in any way guaranteed by any entity other than the applicant.

(d) Showings of financial resources. Applicants relying upon personal or internal financial resources must submit the following:

(1) Audited financial statements, certified within one year of the date of the cellular application, that show the availability of sufficient net current assets to construct and operate for one year the proposed cellular system;

(2) A balance sheet current within 60 days of the date of filing that shows the continued availability of sufficient net current assets to construct and operate for one year the proposed cellular system; and,

(3) A certification by the applicant or an officer of the applicant organization attesting to the validity of the unaudited balance sheet.

(e) Parent corporation financing. Applicants relying upon financing obtained from parent corporations must submit the showings listed in paragraph (d) of this section as the information pertains to the parent corporation.

(f) Notice upon default. In addition to the disclosures required by paragraph (c) of this section, any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed cellular system must include a provision for a minimum of ten (10) days prior written notification to the licensee, and to the FCC, before any such equipment may be repossessed under default provision of the agreement.

(g) Competing applications in cellular renewal proceedings. Initial cellular applications that are competing against a cellular renewal application are subject to the rules in this paragraph instead of the rules in paragraphs (a) through (f) of this section.

(1) Any applicant filing a competing application against a cellular renewal application must demonstrate, at the time it files its application, that it has either:

(i) A firm financial commitment, an irrevocable letter of credit or performance bond in the amount of its realistic and prudent estimated costs of construction and any other expenses to be incurred during the first year of operating its proposed system (the irrevocable letter of credit or performance bond must be from the type of financial institution described in paragraph (g)(3) of this section); or,

(ii) Available resources, as defined in paragraph (g)(4) of this section, necessary to construct and operate its proposed cellular system for one year.

(2) The firm financial commitment may be contingent on the applicant obtaining an authorization. The applicant must also list all of its realistic and prudent estimated costs of construction and any other expenses to be incurred during the first year of operating its proposed system.

(3) The firm financial commitment required above shall be obtained from a state or federally chartered bank or savings and loan association, another recognized financial institution, or the financial arm of a capital equipment supplier; shall specify the terms of the loan or other form of credit arrangement, including the amount to be borrowed, the interest to be paid, the amount of the commitment fee and the fact that it has been paid, the terms of repayment and any collateral required; and shall contain a statement:

(i) That the lender has examined the financial condition of the applicant, including audited financial statements where applicable, and has determined that the applicant is creditworthy;

(ii) That the lender has examined the financial viability of the proposal for which the applicant intends to use the commitment;

(iii) That the lender is committed to providing a sum certain to the particular applicant;

(iv) That the lender's willingness to enter into the commitment is based solely on its relationship with the applicant; and,

(v) That the commitment is not in any way guaranteed by an entity other than the applicant.

(4) Applicants intending to rely on personal or internal resources must submit:

(i) Audited financial statements certified within one year of the date of the cellular application, indicating the availability of sufficient net current assets to construct and operate the proposed cellular system for one year;

(ii) A balance sheet current within 60 days of the date of filing its application that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed cellular system for one year; and,

(iii) A certification by the applicant or an officer of the applicant organization attesting to the validity of the unaudited balance sheet.

(5) Applicants intending to rely upon financing obtained through a parent corporation must submit the information required by paragraph (g)(4) of this section, as the information pertains to the parent corporation.

(6) As an alternative to relying upon a firm financial commitment, an irrevocable letter of credit, or a performance bond from a financial institution as described in paragraph (g)(3) of this section, an applicant may state that it has placed in an escrow account sufficient cash to meet its construction and first-year operating expenses. Such a statement must specify the amount of cash, the escrow account number and the financial institution where the escrow account is located.

(7) Any competing application filed against the renewal application of an incumbent cellular licensee that does not demonstrate, at the time it is initially filed, that the competing applicant has sufficient funds to construct and operate for one year its proposed cellular system will be dismissed.

(h) Exemptions. Any licensee applying for an unserved area adjacent to its existing cellular system, to integrate such area into the existing system, is exempt from the financial demonstration requirements of this section. In addition, modification applications and pro forma assignment and transfer of control applications are exempt from the financial demonstration requirements of this section.

§ 22.939 Site availability requirements for applications competing with cellular renewal applications.

In addition to the other requirements set forth in this part for initial cellular applications, any application competing against a cellular renewal application must contain, when initially filed, appropriate documentation demonstrating that its proposed antenna site(s) will be available. Competing applications that do not include such documentation will be dismissed. If the competing applicant does not own a particular site, it must, at a minimum, demonstrate that the site is available to it by providing a letter from the owner of the proposed antenna site expressing the owner's intent to sell or lease the proposed site to the applicant. If any proposed antenna site is under U.S. Government control, the applicant must submit written confirmation of the site's availability from the appropriate Government agency. Applicants which file competing applications against incumbent cellular licensees may not rely on the assumption that an incumbent licensee's antenna sites are available for their use.

§ 22.940 Criteria for comparative cellular renewal proceedings.

This section sets forth criteria to be used in comparative cellular renewal proceedings. The ultimate issue in comparative renewal proceedings will be to determine, in light of the evidence adduced in the proceeding, what disposition of the applications would best serve the public interest, convenience and necessity.

(a) Renewal expectancies. The most important comparative factor to be considered in a comparative cellular renewal proceeding is a major preference, commonly referred to as a "renewal expectancy".

(1) The cellular renewal applicant involved in a comparative renewal proceeding will receive a renewal expectancy, if its past record for the relevant license period demonstrates that:

(i) The renewal applicant has provided "substantial" service during its past license term. "Substantial" service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal; and

(ii) The renewal applicant has substantially complied with applicable FCC rules, policies and the Communications Act of 1934, as amended.

(2) In order to establish its right to a renewal expectancy, a cellular renewal applicant involved in a comparative renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(i) A description of its current service in terms of geographic coverage and population served, as well as the system's ability to accommodate the needs of roamers;

(ii) An explanation of its record of expansion, including a timetable of the construction of new cell sites to meet changes in demand for cellular service;

(iii) A description of its investments in its cellular system; and

(iv) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph.

(3) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications that were pending on the date it filed its renewal application. Such credit will not be allowed if the modification application is dismissed or denied.

(b) Additional comparative issues. The following additional comparative issues will be included in comparative cellular renewal proceedings, if a full comparative hearing is conducted pursuant to § 22.935(c).

(1) To determine on a comparative basis the geographic areas and population that each applicant proposes to serve; to determine and compare the relative demand for the services proposed in said areas; and to determine and compare the ability of each applicant's cellular system to accommodate the anticipated demand for both local and roamer service;

(2) To determine on a comparative basis each applicant's proposal for expanding its system capacity in a coordinated manner in order to meet anticipated increasing demand for both local and roamer service;

(3) To determine on a comparative basis the nature and extent of the service proposed by each applicant, including each applicant's proposed rates, charges, maintenance, personnel, practices, classifications, regulations and facilities (including switching capabilities); and

(4) To determine on a comparative basis each applicant's past performance in the cellular industry or another business of comparable type and size.

(c) Additional showings for competing applications. With respect to evidence introduced pursuant to paragraph (b)(3) of this section, any applicant filing a competing application against a cellular renewal application (competing applicant) who claims a preference for offering any service not currently offered by the incumbent licensee must demonstrate that there is demand for that new service and also present a business plan showing that the competing applicant can operate the system economically. Any competing applicant who proposes to replace analog

technology with digital technology will receive no credit for its proposal unless it submits a business plan showing how it will operate its system economically and how it will provide more comprehensive service than does the incumbent licensee with existing and implemented cellular technology.

§ 22.941 System identification numbers.

System identification numbers (SIDs) are 15 bit binary numbers assigned to cellular systems. SIDs are transmitted by the cellular systems so that cellular mobile stations can determine whether the system through which they are communicating is a system to which they subscribe, or whether they are considered by the system to be roamers.

(a) The FCC assigns one SID to each cellular system on its initial authorization. Cellular systems may transmit only their assigned SID(s) and/or the SIDs assigned to other cellular systems. A cellular system may transmit the SID assigned to another cellular system only if the licensee of that system concurs with such use of its assigned SID.

(b) Licensees must notify the FCC (FCC Form 489) if their cellular systems transmit SIDs assigned to other cellular systems. The notification must indicate the concurrence of the licensee(s) of such other systems with this use of their assigned SID(s). The notification must be mailed or delivered to the filing place (see § 22.106) no later than 15 days after the system begins transmitting the SID(s).

(c) Licensees may request that an additional (previously unassigned) SID be assigned to their system by filing an application for minor modification of station (FCC Form 401).

§ 22.942 Limitations on interests in licensees for both channel blocks in an area.

No person may have a direct or indirect ownership interest in licensees for both channel blocks in overlapping cellular geographic service areas (CGSAs), unless such interests pose no substantial threat to competition. A licensee, a person that owns a controlling interest in a licensee, or a person that actually controls a licensee for one channel block in a CGSA must not have any direct or indirect ownership interest in the licensee, a person that owns a controlling interest in a licensee, or a person that actually controls a licensee for the other channel block in an overlapping CGSA.

(a) A direct or indirect ownership interest of 5 % or less in both systems is automatically excluded from the general rule prohibiting multiple ownership interests. Interests of less than 5 % are considered and are not excluded from the general rule prohibiting multiple ownership interests in cases of persons or entities that own a small percentage of the licensee but nonetheless actually control the licensee, a person that owns a controlling interest in the licensee, or a person that actually controls the licensee.

(b) Divestiture of interests as a result of a transfer of control or assignment of authorization must occur prior to consummating the transfer or assignment.

§ 22.943 Limitations on assignments and transfers of cellular authorizations.

The following limitations apply to applications for consent to transfer of control or assignment of authorizations in the Cellular Radiotelephone Service.

(a) Trafficking. Applications for consent to transfer of control or assignment of authorization in the Cellular Radiotelephone Service are subject to the provisions of § 22.139, except for:

(1) Applications reflecting the trading of an ownership interest in an authorized but unconstructed cellular system in one market for a commensurate interest in a cellular system in another market; and,

(2) Applications for consent to transfer of control or assignment of a cellular authorization obtained by random selection, after commencement of service.

(b) Unserved area systems. Except as otherwise provided in paragraph (b)(2) of this section, the FCC does not accept applications for consent to transfer of control or assignment of the authorization of a cellular system licensed to serve an unserved area until the system has provided service to subscribers for at least one year.

(1) Licensees must not enter into any agreement (e.g. option agreement or management contract) to transfer control of the licensee of the system until the system has provided service to subscribers for one year.

(2) The FCC may accept and grant applications for consent to transfer of control or for assignment of authorization if the transfer or assignment is pro forma and does not involve a change in ownership.

(c) Systems authorized as result of comparative renewal proceeding. Except as otherwise provided in paragraphs (c)(1), (c)(2) and (c)(3) of this section, the FCC does not accept applications for consent to transfer of control or for assignment of the authorization of a cellular system that has been acquired by the current licensee for the first time as a result of a comparative renewal proceeding until the system has provided service to subscribers for at least three years.

(1) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a part of a bona fide sale of an on-going business to which the cellular operation is incidental.

(2) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a result of the death of the licensee.

(3) The FCC may accept and grant applications for consent to transfer of control or for assignment of authorization if the transfer or assignment is pro forma and does not involve a change in ownership.

§ 22.944 Transfers of interests in applications.

This section governs transfers of interest in applicants having a pending application for a new cellular system. For the purposes of this section, "interest in an application" means interest in the applicant.

(a) Except as provided in paragraph (b) of this section, the transfer of any interest in any application for initial authorization to operate a cellular system is prohibited. For the purposes of this section, transfer of interest means the sale, assignment, placement of equity or convertible debt, grant of an option or future share or participation in the applicant or any interest thereof.

(b) The following types of transfers of interest in cellular applications are permitted:

(1) Transfers that are necessary to raise capital, including the placement of debt or equity, to finance a bona fide business need of the applicant or an affiliated company, not related to the cellular application or financing of the cellular system proposed therein;

(2) Transfers that are part of a bona fide sale of an ongoing business to which the cellular applications are merely adjunct or incidental;

(3) Transfers required by a court-ordered decree granting a divorce or enforcing a spousal separation agreement;

(4) Transfers necessitated by the death of the applicant;

(5) Transfers involving the routine trading of shares in a publicly traded corporation that do not constitute a transfer of control of the applicant;

(6) Transfers resulting from pro forma transfers of control of the applicant, not involving changes in ownership;

(7) Transfers involving only the transfer of interest by one existing partner in a partnership applicant to another existing partner in that same partnership, or between existing shareholders in a closely-held corporation, which does not effect a transfer of control of the applicant;

(8) Transfers resulting from the alienation or exercise of stock warrants or stock options that existed prior to the filing of the application.

§ 22.945 Interests in multiple applications.

This section governs interests in applicants with mutually exclusive applications for a new cellular system. For the purposes of this section, "interest in an application" means interest in the applicant.

(a) General. Except as otherwise provided in this section, parties must not have any interest, direct or indirect, in more than one application for authority to operate a new cellular system in the same cellular market.

(b) Abutting CGSAs. Licensees of existing systems whose cellular geographic service area (CGSA) abuts a proposed CGSA may each file one application that is mutually exclusive with the applications of other such licensees, even though they share common owners, provided that such licensees do not thereby acquire a simultaneous interest in applications for both channel blocks in any geographical area.

(c) Publicly traded corporate applicants. Parties must not have any interest, direct or indirect, in more than one mutually exclusive initial application for which the applicant is a publicly traded corporation, except that ownership interests of less than 5% are not considered. Ownership and other interests in applicants are attributed to their holder and deemed cognizable as set forth below.

(1) Passive investors. Investment companies, as defined in 15 U.S.C. 80a-3, insurance companies and banks holding stock through their trust departments in trust accounts are deemed to have a cognizable interest in a publicly traded cellular applicant only if they hold 10% or more of the stock of the applicant. This provision applies only if an applicant in which such parties hold an interest certifies in its application that no such party has exerted or attempted to exert any influence or control over the officers of the applicant.

(2) Multiplier. Attribution of ownership interests in a publicly traded cellular applicant that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent, it is not included in the multiplication.

§ 22.946 Service commencement and construction periods for cellular systems.

This section specifies the service commencement and construction periods and related requirements for cellular systems.

Table H-1 - Commencement of Service

Type of Cellular System	Required to Commence Service within
the first system authorized on each channel block in markets 1-90	36 months
the first system authorized on each channel block in all other markets and any subsequent systems authorized pursuant to contracts in partitioned markets	18 months
all other systems	12 months

(a) Commencement of service. New cellular systems must be at least partially constructed and begin providing cellular service to subscribers within the service commencement periods specified in Table H-1. Service commencement periods begin on the date of grant of the initial authorization, and are not extended by the grant of subsequent authorizations for the cellular system (such as for major modifications).

(1) To satisfy the requirement of paragraph (a) of this section, a cellular system must be interconnected with the public switched telephone network (PSTN) and must be providing service to mobile stations operated by its subscribers and roamers. A cellular system is not considered to be providing service to subscribers if mobile stations can not make telephone calls to landline telephones and receive telephone calls from landline telephones through the PSTN, or if the system intentionally serves only roamer stations.

(2) The licensee must notify the FCC (FCC Form 489) no later than 15 days after the requirements of paragraph (a) of this section are met.

(b) Construction period for specific facilities. The construction period applicable to specific new or modified cellular facilities for which an authorization has been granted is one year from the date the authorization is granted. Failure to comply with this requirement results in termination of the authorization for the specific new or modified facility, pursuant to § 22.144(b).

§ 22.947 Five year build-out period.

The licensee of the first cellular system authorized on each channel block in each cellular market is afforded a five year period, beginning on the date the initial authorization for the system is granted, during which it may expand the system within that market.

(a) Exclusive right to expand within market. Except as provided in paragraph (b) of this section, the FCC does not accept applications for authority to operate a new cellular system in any unserved area in a market on a channel block during the five year build-out period.

(b) Partitioned markets. During the five year build-out period, the licensee of the first cellular system on each channel block in each market may enter into contracts with eligible parties, allowing such parties to apply (FCC Form 401) for a new cellular system on that channel block within the market. The FCC may grant such applications if they are in compliance with the rules in this part. Markets with two or more authorized cellular systems on the same channel block during the five year build-out period are referred to (with respect to the affected channel block) as "partitioned markets".

(1) Partitioning contracts must define the CGSA of the subsequent cellular system in accordance with § 22.911, including any expansion rights ceded. If not exercised, any such expansion rights terminate at the end of the five year build-out period.

(2) The five year build-out period begins on the date the initial authorization for the first cellular system is granted, and is not extended or affected in any way by the initial authorization of any subsequent cellular systems pursuant to paragraph (b) of this section.

(c) System information update. Sixty days before the end of the five year build-out period, the licensee of the each cellular system authorized on each channel block in each cellular market must file, in triplicate, a system information update (SIU), comprising a full size map, a reduced map, and an exhibit showing technical data relevant to determination of the system's CGSA. Separate maps must be submitted for each market into which the CGSA extends, showing the extension area in the adjacent market. Maps showing extension areas must be

labeled (i.e. marked with the market number and channel block) for the market into which the CGSA extends. SIUs must accurately depict the relevant cell locations and coverage of the system at the end of the five year build-out period. SIUs must be filed at the Mobile Services Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554. If any changes to the system occur after the filing of the SIU, but before the end of the five year build-out period, the licensee must file, in triplicate, additional maps and/or data as necessary to insure that the cell locations and coverage of the system as of the end of the five year build-out period are accurately depicted.

(1) The scale of the full-size map must be 1:500,000, regardless of whether any different scale is used for the reduced map. The map must have a legend, a distance scale and correctly labeled latitude and longitude lines. The map must be clear and legible. The map must accurately show the cell sites (transmitting antenna locations) which determine the CGSA, the entire CGSA, any extension of the composite service area boundary beyond the CGSA (see § 22.911) and the relevant portions of the cellular market boundary. The date on which the map depictions are accurate must appear on the map.

(2) The reduced map must be a proportional reduction, to 8½ × 11 inches, of the full-size map required in paragraph (c)(1) of this section, unless it proves to be impractical to depict the entire market by reducing the full-size map. In such instance, an 8½ × 11 inch map of a different scale may be substituted, provided that the required features of the full-size map are clearly depicted and labeled.

§ 22.949 Unserved area licensing process.

This section sets forth the process for licensing unserved areas in cellular markets on channel blocks for which the five year build-out period has expired. This process has two phases: Phase I and Phase II.

(a) Phase I. Phase I is a one-time process that provides an opportunity for eligible parties to file competing applications for authority to operate a new cellular system in or to expand an existing cellular system into unserved areas (Phase I initial applications) as soon as these areas become available. In addition, each licensee whose Phase I initial application is granted is afforded one opportunity during the Phase I process to file an application proposing major modifications to the cellular system authorized by that grant (a Phase I major modification application), without being subject to competing applications.

(1) Phase I initial applications must be filed on the 31st day after the expiration of the five year build-out period of the authorized system(s) on the channel block requested in the market containing the unserved area.

(i) Each Phase I application must request authorization for one and only one cellular geographic service area (CGSA) in one and only one cellular market.

(ii) Applicants must not file more than one Phase I initial application for any cellular market.

(iii) Phase I initial applications must not propose any de minimis or contract service area boundary (SAB) extensions.

(2) Only one Phase I initial application is granted on each channel block in each market. Consequently, whenever two or more acceptable Phase I initial applications are timely-filed in the same market on the same channel block, such Phase I initial applications are mutually exclusive, regardless of any other considerations such as the technical proposals. In order to determine which of such mutually exclusive Phase I initial applications to grant, the Commission administers random selection procedures in accordance with Part 1 of this chapter. After such procedures, the application of the tentative selectee may be granted and the applications excluded by that grant may be dismissed without prejudice.

(3) Phase I major modification applications (applications filed during Phase I that propose major modifications to cellular systems authorized by the grant of Phase I initial applications) must be filed no later than 90 days after the grant of the Phase I initial application. Each Phase I licensee may file only one Phase I major modification application. The FCC will not accept any competing applications in response to a Phase I major modification application. Phase I licensees may not sell to a third party any rights to apply for unserved area.

(i) Phase I major modification applications may propose de minimis or contract SAB extensions; provided that a contract SAB extension into an adjacent market may be proposed only if, at the time the Phase I major modification application is filed, the licensee in the adjacent market (on the requested channel block) has the right to enter into such a contract (see § 22.912(c)).

(ii) Phase I major modification applications may propose a CGSA that is not contiguous with the authorized or proposed CGSA, provided that the non-contiguous CGSA meets the minimum coverage requirement of § 22.951.

(4) Phase I licensees may also file applications for or notifications of minor modifications to its system. However, such minor modifications may not reduce the size of the CGSA below the minimum coverage requirement of § 22.951.

(b) Phase II. Phase II is an open-ended filing process that allows eligible parties to apply for any unserved areas that may remain in a market after the Phase I process is complete.

(1) If a Phase I initial application is granted for a market and channel block, Phase II applications (applications for authority to operate a cellular system in any remaining unserved area) for

that market and channel block may be filed on or after the 121st day after the Phase I application was granted. If no Phase I initial applications are granted for a market and channel block, Phase II applications for that market and channel block may be filed on or after the 31st day after the FCC dismissed the last pending Phase I application. If no Phase I initial applications are received for a market and channel block, Phase II applications for that market and channel block may be filed on or after the 32nd day after the expiration of the relevant five year build-out period.

(2) There is no limit to the number of Phase II applications that may be granted on each channel block in each market. Consequently, Phase II applications are mutually exclusive only if the proposed CGSAs would overlap. Furthermore, only mutually exclusive Phase II applications with the same filing date are entitled to inclusion in a random selection process. Where all mutually exclusive Phase II applications have different filing dates, the FCC may grant the earliest-filed application and dismiss all applications excluded by that grant. For the purposes of this section, the filing date of an application is the date on which that application was received or the date on which the most recently filed major amendment to that application was received.

(3) Phase II applications may propose a CGSA covering more than one cellular market. Each Phase II application must request authorization for one and only one CGSA. Phase II applications may propose de minimis and contract SAB extensions.

(c) Settlements. Settlements among some, but not all, applicants with mutually exclusive applications for unserved areas (partial settlements) are prohibited. Settlements among all applicants with mutually exclusive applications (full settlements) are allowed and must be filed no later than 15 business days before the random selection process is scheduled to take place.

(d) Limitations on amendments. Notwithstanding the provisions of § 22.122, Phase I applications are subject to the following additional limitations in regard to the filing of amendments.

(1) The FCC will not accept amendments (of any type) to mutually exclusive Phase I applications prior to the conclusion of the random selection process.

(2) The FCC will not accept major amendments to Phase I applications.

(3) Minor amendments required by § 1.65 of this chapter must be filed no later than 30 days after public notice announcing the results of the random selection process.

§ 22.951 Minimum coverage requirement.

Applications for authority to operate a new cellular system in an unserved area, other than those filed by the licensee of an existing system that abuts the unserved area, must propose a contiguous cellular geographical service area (CGSA) of at least 130 square kilometers (50 square miles). Area within contract SAB extensions counts toward the minimum coverage requirement. However, area within de minimis SAB extensions does not count toward the minimum coverage requirement. Applications for authority to operate a new cellular system in an unserved area, other than those filed by the licensee of an existing system that abuts the unserved area, must not propose coverage of water areas only (or water areas and uninhabited islands or reefs only), except for unserved areas in the Gulf of Mexico MSA.

§ 22.953 Content and form of applications.

Applications for authority to operate a cellular system in an unserved area must comply with the specifications in this section.

(a) New systems. Forms, pages and exhibits must be prepared exactly as described and assembled in the order listed in this section.

(1) Application cover. The paper original of each application must be enclosed in a stiff cover fastened securely along the left edge, without exposed sharp edges.

(2) Transmittal sheet. The first page after the front cover of the application must be the transmittal sheet.

(i) Copies of the required transmittal sheet may be obtained by contacting the Consumer Assistance Office, Federal Communications Commission, 1919 M Street NW, Washington, DC 20554.

(ii) On the transmittal sheet, the following information is required: the name of the applicant, the channel block, and the market number or numbers and the market name or names in which the proposed CGSA is located. This information on the transmittal sheet must match exactly the information on the jacket of the microfiche and the cover of the application.

(iii) The transmittal sheet also contains a certification. Applicants must certify to the following:

> I hereby certify that this application for an authorization in the Cellular Radiotelephone Service is complete in every respect and contains all of the information required by FCC Form 401 and the Federal Communications Commission's rules governing this service. I acknowledge that, if upon examination by the FCC, this certification is found to be incorrect, the FCC will dismiss this application without further consideration.

I certify that I am the real party-in-interest in this application and there are no agreements or understandings other than those, if any, disclosed in this application, which provide that someone other than the applicant has a direct or indirect interest in the application. I also certify that the applicant intends to construct and operate the station as proposed and that there are no agreements or understandings that are inconsistent with that intent.

I declare, under penalty of perjury, that I am the authorized representative of the above-named applicant in the matter of this application, that I have read the foregoing certification, and that the matter and things therein stated are true and correct

(iv) The certification must be signed and dated in accordance with the requirements of § 1.743 of this chapter. The certification must be signed in ink. Mechanical reproductions of the signature must not be used. The name of and position held by the person signing must be typed or clearly and legibly printed beneath the signature.

(3) Table of contents. The table of contents must list all of the exhibits to the application.

(4) FCC Form 401. All information required for cellular applications on FCC Form 401 must be supplied.

(5) Exhibits. The following exhibits must be set off by tabs and numbered as follows:

(i) EXHIBIT I - full-size map. The scale of the full-size map must be 1:500,000, regardless of whether any different scale is used for the reduced map required in Exhibit II. The map must have a legend, a distance scale and correctly labeled latitude and longitude lines. The map must be clear and legible. The map must accurately show the cell sites (transmitting antenna locations), the entire CGSA, any extension of the composite service area boundary beyond the CGSA (see § 22.911) and the relevant portions of the cellular market boundary.

(ii) EXHIBIT II - reduced map. This map must be a proportional reduction, to 8½ × 11 inches, of the full-size map required for Exhibit I, unless it proves to be impractical to depict the entire cellular market by reducing the full-size map. In such instance, an 8½ × 11 inch map of a different scale may be substituted, provided that the required features of the full-size map are clearly depicted and labeled.

(iii) EXHIBIT III - engineering. This exhibit must contain the data and methodology used to calculate the CGSA and service area boundary.

(iv) EXHIBIT IV - channel plan. This exhibit must show which specific channels (or groups) are to be used at each cell site. Any necessary table for converting channel numbers to center frequencies must be provided.

(v) EXHIBIT V - ownership information. This exhibit must contain the information required by § 22.108. Additionally, individual applicants must disclose, in this exhibit, all interests (including those less than 5%) in publicly traded corporation(s) that have applications which are mutually exclusive with the individual's application.

(vi) EXHIBIT VI - service proposal. This exhibit must describe the services proposed for subscribers and roamers, including the proposed method for handling complaints.

(vii) EXHIBIT VII - cellular design. This exhibit must show that the proposed system design complies with cellular system design concepts, and must describe the method proposed to expand the system in a coordinated fashion as necessary to address changing demand for cellular service.

(viii) EXHIBIT VIII - blocking level. This exhibit must disclose the blocking probability or other criteria to be used to determine whether it is necessary to take measures to increase system capacity to maintain service quality.

(ix) EXHIBIT IX - start-up expenses. This exhibit must disclose in detail the projected cost of construction and other initial expenses of the proposed system, and how the applicant intends to meet these expenses and the costs of operation for the first year.

(x) EXHIBIT X - interconnection arrangements. This exhibit is required for applicants that provide public landline message telephone service in any portion of the proposed CGSA. This exhibit must describe exactly how the proposed system would interconnect with the landline network. The description must be of sufficient detail to enable a competitor to connect with the landline system in exactly the same manner, if the competitor so chooses.

(b) Existing systems. Applications for changes to existing systems need only contain the form required by paragraph (a)(4) of this section and the exhibits required by paragraphs (a)(5)(i) through (iii) of this section.

§ 22.955 Canadian condition.

Pursuant to an agreement between the FCC and the Department of Communications in Canada, authorizations for cellular systems within 72 kilometers (45 miles) of the U.S.-Canadian border must have the following condition attached:

This authorization is subject to the condition that, in the event that cellular systems using the same channel block as granted herein are authorized in adjacent territory in Canada, coordination of any of your transmitter installations which are within 72 kilometers (45 miles) of the U.S.-Canadian border shall be required to eliminate

any harmful interference that might otherwise exist and to insure continuance of equal access to the channel block by both countries.

§ 22.957 Mexican condition.

Pursuant to an agreement between the United States and Mexico, FCC authorizations for cellular systems within 72 kilometers (45 miles) of the United States-Mexican border must have the following condition attached:

> This authorization is subject to the condition that, in the event cellular systems using the same frequencies granted herein are authorized in adjacent territory in Mexico, coordination of your transmitter installations which are within 72 kilometers (45 miles) of the United States-Mexico border shall be required to eliminate any harmful interference that might otherwise exist and to ensure continuance of equal access to the frequencies by both countries. The operator of this system shall not contract with customers in Mexico, and further, users of the system must be advised that operation of a mobile unit in Mexico is not permitted at this time without the express permission of the Mexican government. The above conditions are subject to modification pending further notice from the FCC.

§ 22.959 Rules governing processing of applications for initial systems.

Pending applications for authority to operate the first cellular system on a channel block in an MSA or RSA market continue to be processed under the rules governing the processing of such applications that were in effect when those applications were filed, unless the Commission determines otherwise in a particular case.

Subpart I - Offshore Radiotelephone Service

§ 22.1001 Scope.

The rules in this subpart govern the licensing and operation of offshore radiotelephone stations. The licensing and operation of these stations and systems is also subject to rules elsewhere in this part that apply generally to the public mobile services. However, in case of conflict, the rules in this subpart govern.

§ 22.1003 Eligibility.

Offshore central station licenses may be licensed to communications common carriers. Offshore subscriber stations may be licensed to common carriers or users of the service.

§ 22.1005 Priority of service.

Facilities in the Offshore Radiotelephone Service are intended primarily for rendition of public message service between offshore subscriber and central stations. However, they may also be used to render private leased line communication service, provided that such usage does not reduce or impair the extent or quality of communication service which would be available, in the absence of private leased line service, to the general public receiving or subsequently requesting public message service from an offshore central station.

§ 22.1007 Channels for offshore radiotelephone systems.

The channels listed in this section are allocated for paired assignment to transmitters located in the specified geographical zones that provide offshore radiotelephone service. All channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

(a) Zone A - Southern Louisiana. The geographical area in Zone A is bounded as follows:

> From longitude W.87°45' on the East to longitude W.94°00' on the West and from the 4.8 kilometer (3 mile) limit along the Gulf of Mexico shoreline on the North to the limit of the Outer Continental Shelf on the South.

(1) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for voice-grade general communications:

central	subscriber	central	subscriber
488.025	491.025	488.225	491.225
488.050	491.050	488.250	491.250
488.075	491.075	488.275	491.275
488.100	491.100	488.300	491.300
488.125	491.125	488.325	491.325
488.150	491.150	488.350	491.350
488.175	491.175	488.375	491.375
488.200	491.200	488.400	491.400

(2) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for voice-grade general communications and private line service:

central	subscriber	central	subscriber
488.425	491.425	488.575	491.575
488.450	491.450	488.600	491.600
488.475	491.475	488.625	491.625
488.500	491.500	488.650	491.650
488.525	491.525	488.675	491.675
488.550	491.550	488.700	491.700

(3) These channels may be assigned for use by relay stations in systems where it would be impractical to provide offshore radiotelephone service without the use of relay stations.

488.725	491.725	488.775	491.775
488.750	491.750	488.800	491.800

(4) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for emergency communications involving protection of life and property.

central	subscriber	central	subscriber
488.825	491.825	488.875	491.875
488.850	491.850	488.900	491.900

(5) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for emergency auto alarm and voice transmission pertaining to emergency conditions only.

central	subscriber
488.950	491.950

(6) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for emergency shut-off remote control telemetry, environmental data acquisition and dissemination, or facsimile transmissions.

central	subscriber	central	subscriber
489.000	492.000	489.200	492.200
489.025	492.025	489.225	492.225
489.050	492.050	489.250	492.250
489.075	492.075	489.275	492.275
489.100	492.100	489.300	492.300
489.125	492.125	489.325	492.325
489.150	492.150	489.350	492.350
489.175	492.175	489.375	492.375

(7) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for private line service:

central	subscriber	central	subscriber
489.400	492.400	489.725	492.725
489.425	492.425	489.750	492.750
489.450	492.450	489.775	492.775
489.475	492.475	489.800	492.800
489.500	492.500	489.825	492.825
489.525	492.525	489.850	492.850
489.550	492.550	489.875	492.875
489.575	492.575	489.900	492.900
489.600	492.600	489.925	492.925
489.625	492.625	489.950	492.950
489.650	492.650	489.975	492.975
489.675	492.675	490.000	493.000
489.700	492.700		

(8) Interstitial channels: Interstitial channels are those with center frequencies offset by ±12.5 kHz from the listed center frequencies. The FCC may assign interstitial channels to offshore stations in Zone A subject to the following conditions:

(i) Offshore stations transmitting on interstitial channels must be located east of W.92° longitude.

(ii) Operations on interstitial channels are considered to be secondary to operations on channels with the listed center frequencies.

(iii) Offshore stations operating on interstitial channels must be used only for voice grade general communications or to provide for private line service.

NOTE to paragraph (a) of § 22.1007: These channels are contained in UHF TV Channel 17.

(b) Zone B - Southern Louisiana - Texas.

(1) The geographical area in Zone B is bounded as follows:

From longitude W.87°45' on the East to longitude W.95°00' on the West and from the 4.8 kilometer (3 mile) limit along the Gulf of Mexico shoreline on the North to the limit of the Outer Continental Shelf on the South.

(2) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for voice-grade general communications and private line service:

central	subscriber	central	subscriber
485.025	482.025	486.025	483.025
485.050	482.050	486.050	483.050
485.075	482.075	486.075	483.075
485.100	482.100	486.100	483.100
485.125	482.125	486.125	483.125
485.150	482.150	486.150	483.150
485.175	482.175	486.175	483.175
485.200	482.200	486.200	483.200
485.225	482.225	486.225	483.225
485.250	482.250	486.250	483.250
485.275	482.275	486.275	483.275
485.300	482.300	486.300	483.300
485.325	482.325	486.325	483.325
485.350	482.350	486.350	483.350
485.375	482.375	486.375	483.375
485.400	482.400	486.400	483.400
485.425	482.425	486.425	483.425

485.450 ... 482.450	486.450 ... 483.450
485.475 ... 482.475	486.475 ... 483.475
485.500 ... 482.500	486.500 ... 483.500
485.525 ... 482.525	486.525 ... 483.525
485.550 ... 482.550	486.550 ... 483.550
485.575 ... 482.575	486.575 ... 483.575
485.600 ... 482.600	486.600 ... 483.600
485.625 ... 482.625	486.625 ... 483.625
485.650 ... 482.650	486.650 ... 483.650
485.675 ... 482.675	486.675 ... 483.675
485.700 ... 482.700	486.700 ... 483.700
485.725 ... 482.725	486.725 ... 483.725
485.750 ... 482.750	486.750 ... 483.750
485.775 ... 482.775	486.775 ... 483.775
485.800 ... 482.800	486.800 ... 483.800
485.825 ... 482.825	486.825 ... 483.825
485.850 ... 482.850	486.850 ... 483.850
485.875 ... 482.875	486.875 ... 483.875
485.900 ... 482.900	486.900 ... 483.900
485.925 ... 482.925	486.925 ... 483.925
485.950 ... 482.950	486.950 ... 483.950
485.975 ... 482.975	486.975 ... 483.975
486.000 ... 483.000	477.050 ... 480.050

NOTE to paragraph (b) of § 22.1007: These channels are contained in UHF TV Channel 16.

(c) Zone C - Southern Texas. The geographical area in Zone C is bounded as follows:

Longitude W.94°00' on the East, the 4.8 kilometer (3 mile) limit on the North and West, a 282 kilometer (175 mile) radius from the reference point at Linares, N.L., Mexico on the Southwest, latitude N.26°00' on the South, and the limits of the outer continental shelf on the Southeast.

(1) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for emergency auto alarm and voice transmission pertaining to emergency conditions only.

central	subscriber
476.950 ...	479.950

(2) These channels may be assigned for use by offshore central (base/fixed) or subscriber stations (fixed, temporary fixed, surface and/or airborne mobile) as indicated, for voice-grade general communications and private line service:

476.025 ... 479.025	477.075 ... 480.075
476.050 ... 479.050	477.100 ... 480.100
476.075 ... 479.075	477.125 ... 480.125
476.100 ... 479.100	477.150 ... 480.150
476.125 ... 479.125	477.175 ... 480.175
476.150 ... 479.150	477.200 ... 480.200
476.175 ... 479.175	477.225 ... 480.225
476.200 ... 479.200	477.250 ... 480.250
476.225 ... 479.225	477.275 ... 480.275
476.250 ... 479.250	477.300 ... 480.300
476.275 ... 479.275	477.325 ... 480.325
476.300 ... 479.300	477.350 ... 480.350
476.325 ... 479.325	477.375 ... 480.375
476.350 ... 479.350	477.400 ... 480.400
476.375 ... 479.375	477.425 ... 480.425
476.400 ... 479.400	477.450 ... 480.450
476.425 ... 479.425	477.475 ... 480.475
476.450 ... 479.450	477.500 ... 480.500
476.475 ... 479.475	477.525 ... 480.525
476.500 ... 479.500	477.550 ... 480.550
476.525 ... 479.525	477.575 ... 480.575
476.550 ... 479.550	477.600 ... 480.600
476.575 ... 479.575	477.625 ... 480.625
476.600 ... 479.600	477.650 ... 480.650
476.625 ... 479.625	477.675 ... 480.675
476.650 ... 479.650	477.700 ... 480.700
476.675 ... 479.675	477.725 ... 480.725
476.700 ... 479.700	477.750 ... 480.750
476.725 ... 479.725	477.775 ... 480.775
476.750 ... 479.750	477.800 ... 480.800
476.775 ... 479.775	477.825 ... 480.825
476.800 ... 479.800	477.850 ... 480.850
476.825 ... 479.825	477.875 ... 480.875
476.850 ... 479.850	477.900 ... 480.900
476.875 ... 479.875	477.925 ... 480.925
476.900 ... 479.900	477.950 ... 480.950
477.000 ... 480.000	477.975 ... 480.975
477.025 ... 480.025	

§ 22.1009 Transmitter locations.

The rules in this section establish limitations on the locations from which stations in the Offshore Radiotelephone Service may transmit.

(a) All stations. Offshore stations must not transmit from locations outside the boundaries of the appropriate zones specified in § 22.1007. Offshore stations must not transmit from locations within 241 kilometers (150 miles) of any full-service television station that transmits on the TV channel containing the channel on which the offshore station transmits.

(b) Airborne subscriber stations. Airborne subscriber stations must not transmit from altitudes exceeding 305 meters (1000 feet) above mean sea level. Airborne mobile stations in Zone A must not transmit from locations within 129 kilometers (80 miles) of Lake Charles, Louisiana. Airborne mobile stations in Zone B must not transmit from locations within 129 kilometers (80 miles) of Lafayette, Louisiana. Airborne mobile stations in Zone C must not transmit from locations within 129 kilometers (80 mile) of Corpus Christi or locations within 129 kilometers (80 miles) of Houston, Texas.

§ 22.1011 Antenna height limitations.

The antenna height of offshore stations must not exceed 61 meters (200 feet) above mean sea level. The antenna height of offshore surface mobile stations must not exceed 10 meters (30 feet) above the waterline.

§ 22.1013 Effective radiated power limitations.

The effective radiated power (ERP) of transmitters in the Offshore Radiotelephone Service must not exceed the limits in this section.

(a) Maximum power. The ERP of transmitters in this service must not exceed 1000 Watts under any circumstances.

(b) Mobile transmitters. The ERP of mobile transmitters must not exceed 100 Watts. The ERP of mobile transmitters, when located within 32 kilometers (20 miles) of the 4.8 kilometer (3 mile) limit, must not exceed 25 Watts. The ERP of airborne mobile stations must not exceed 1 Watt.

(c) Protection for TV Reception. The ERP limitations in this paragraph are intended to reduce the likelihood that interference to television reception from offshore radiotelephone operations will occur.

(1) Co-channel protection. The ERP of offshore stations must not exceed the limits in Table I-1. The limits depend upon the height above mean sea level of the offshore transmitting antenna and the distance between the antenna location of the offshore transmitter and the antenna location of the main transmitter of the nearest full-service television station that transmits on the TV channel containing the channel on which the offshore station transmits.

(2) Adjacent channel protection. The ERP of offshore stations located within 128.8 kilometers (80 miles) of the main transmitter antenna of a full service TV station that transmits on a TV channel adjacent to the TV channel which contains the channel on which the offshore station transmits must not exceed the limits in the Table I-2. The limits depend upon the height above mean sea level of the offshore transmitting antenna and the distance between the location of the offshore transmitter and the 4.8 kilometer (3 mile) limit.

§ 22.1015 Repeater operation.

Offshore central stations may be used as repeater stations provided that the licensee is able to maintain control of the station, and in particular, to turn the transmitter off, regardless of whether associated subscriber stations are transmitting at the time.

Table I-1 - Maximum ERP (Watts)

Distance	30 meters (100 feet)	45 meters (150 feet)	61 meters (200 feet)
338 km (210 mi)	1000	1000	1000
330 km (205 mi)	1000	900	800
322 km (200 mi)	800	710	630
314 km (195 mi)	590	520	450
306 km (190 mi)	450	400	330
298 km (185 mi)	320	280	240
290 km (180 mi)	250	210	175
282 km (175 mi)	180	150	130
274 km (170 mi)	175	110	100
266 km (165 mi)	95	80	70
258 km (160 mi)	65	55	50
249 km (155 mi)	50	40	35
241 km (150 mi)	35	30	25

Table I-2 - Maximum ERP (Watts)

Distance from the 4.8 km (3 mi) limit	30 meters (100 feet)	61 meters (200 feet)
6.4 km (4 mi)	25	6
8.0 km (5 mi)	40	10
9.7 km (6 mi)	65	15
11.3 km (7 mi)	100	25
12.9 km (8 mi)	150	35
14.5 km (9 mi)	215	50
16.1 km (10 mi)	295	70
17.7 km (11 mi)	400	100
19.3 km (12 mi)	530	130
20.9 km (13 mi)	685	170
22.5 km (14 mi)	870	215
24.1 km (15 mi)	1000	270
25.7 km (16 mi)	1000	415
27.4 km (17 mi)	1000	505
29.0 km (18 mi)	1000	610
30.6 km (19 mi)	1000	730
32.2 km (20 mi)	1000	865
33.8 km (21 mi)	1000	1000

§ 22.1025 Permissible communications.

Offshore central stations must communicate only with subscriber stations (fixed, temporary-fixed, mobile and airborne). Offshore subscriber stations must normally communicate only with and through offshore central stations. Stations in the Offshore Radiotelephone Service may communicate through relay stations authorized in this service.

§ 22.1031 Temporary fixed stations.

The FCC may, upon proper application therefor, authorize the construction and operation of temporary fixed stations in the Offshore Radiotelephone service to be used only when the service of permanent fixed stations is disrupted by storms or emergencies or is otherwise unavailable.

(a) Six month limitation. If it is necessary for a temporary fixed station to remain at the same location for more than six months, the licensee of that station must apply for authorization to operate the station at the specific location at least 30 days before the end of the six month period.

(b) International communications. Communications between the United States and Mexico must not be carried using a temporary fixed station without prior authorization from the FCC. Licensees desiring to carry such communications should apply sufficiently in advance to allow for the time necessary to coordinate with Canada or Mexico.

§ 22.1035 Construction period.

The construction period (see § 22.142) for offshore stations is 18 months.

§ 22.1037 Application requirements for offshore stations.

Applications for new Offshore Radiotelephone Service stations must contain an exhibit showing that:

(a) The applicant has notified all licensees of offshore stations located within 321.8 kilometers (200 miles) of the proposed offshore station, by providing the following data, at least 30 days before filing the application:

(1) The name, business address, channel coordinator, and telephone number of the applicant;

(2) The location and geographical coordinates of the proposed station;

(3) The channel and type of emission;

(4) The height and type of antenna;

(5) The bearing of the main lobe of the antenna; and,

(6) The effective radiated power.

(b) The proposed station will not interfere with the primary ORS channels by compliance with the following separations:

(1) Co-channel to a distance of 241.4 kilometers (150 miles).

(2) If interstitial channels are used, adjacent channels (±12.5 kHz) to a distance of 80.5 kilometers (50 miles).

(3) Third order intermodulation channels (±12.5 kHz) to a distance of 32.2 kilometers (20 miles).

(4) If the proposed transmitting antenna site is located west of longitude W.93° 40', and within 32.2 kilometers (20 miles) of the shoreline, and proposes use of the channels listed in § 22.1007(b), no third-order intermodulation interference would be caused to any base or mobile station using the channels between 488 and 494 Mhz.

APPENDIX C

Rules Cross-reference Table

OLD RULE	NEW RULE
22. 0 (a) and (b)	22.1
22. 0 (c), (d) and (e)	(REMOVED)
22. 1	(REMOVED)
22. 2	22.99
22. 3	22.3
22. 4 (a)(1)	22.7
22. 4 (a)(2)	22.128 (e)
22. 4 (a)(3)	22.132 (a)(1)
22. 4 (b)	22.5
22. 5	22.105
22. 6 (a)	22.105 (c)
22. 6 (b) and (e)	22.106
22. 6 (c)	22.105 (f)
22. 6 (d)	22.105 (d)
22. 9 (a) and (b)	22.105 (c)
22. 9 (c)(1)	22.3 (b)
22. 9 (c)(2)	22.821
22. 9 (d)	22.163
22. 11	22.105
22. 11 (b)	22.145
22. 13 (a)(1)	22.108
22. 13 (a)(2)-(a)(6)	22.107
22. 13 (b)	22.115 (b)
22. 13 (c) and (d)	(REMOVED)
22. 13 (f)	(REMOVED)
22. 15	22.115
22. 15 (b)(1)(i) and (b)(1)(iii)	22.559
22. 15 (b)(1)(ii) and (b)(1)(iii)	22.589
22. 15 (b)(2) (paging)	22.537
22. 15 (b)(2) (two-way)	22.567
22. 15 (c)(1)	22.115 (a)(2)
22. 15 (c)(2)	22.115 (a)(3)
22. 15 (i)(2)	22.529 (a)(2)
22. 15 (i)(3)	22.821
22. 15 (j) and (k) (general)	22.115 (a)(4)
22. 15 (j) and (k) (paging)	22.529
22. 15 (l)	22.1037
22. 15 (m) and (n)	(REMOVED)
22. 16	(REMOVED)
22. 19	22.119
22. 20 (a)	22.128 (d)
22. 20 (b)	(REMOVED)
22. 20 (d)	22.128 (c)
22. 21	22.121 (a)
22. 22	22.121 (b) and (c)
22. 23 (a), (b), (d) and (f)	22.122
22. 23 (c)	22.123
22. 23 (e)	(REMOVED)
22. 23 (g)(1), (g)2), (g)(4), (g)(6) and (g)(7)	(REMOVED)
22. 23 (g)(3)	22.123 (a)
22. 23 (g)(5)	22.123 (j)
22. 23 (h)	(REMOVED)
22. 25	22.125
22. 26	22.120
22. 27	22.120 (d)
22. 27	22.127
22. 27 (b)(1)	22.132
22. 27 (b)(2)	(REMOVED)
22. 27 (c)	(REMOVED)
22. 28	22.128
22. 29	22.129
22. 30	22.130
22. 31	22.131
22. 32	22.132
22. 33	(REMOVED)
22. 35	(REMOVED)
22. 39	22.137
22. 40 (a) and (b)	22.139
22. 40 (c)	22.137 (d)(3)
22. 43 (a)(1)	22.143
22. 43 (a)(2) (Offshore)	22.1035
22. 43 (a)(2) (Paging)	22.511
22. 43 (a)(2) (Rural)	22.713
22. 43 (a)(2) (Air-ground)	22.815
22. 43 (a)(2) (Cellular)	22.946 (b)
22. 43 (a)(3)	22.144 (b)
22. 43 (b)(1)	22.142 (c) and (d)
22. 43 (b)(2)	(REMOVED)
22. 43 (c)(1) and (c)(5)	(REMOVED)
22. 43 (c)(2)	22.946 (a)
22. 43 (c)(3)	22.946 (c)
22. 43 (c)(4)	22.144 (b)
22. 43 (d)	22.143
22. 43 (e)	22.873
22. 44	22.144
22. 45	22.144 (a)

OLD RULE	NEW RULE
22. 50	22.602
22. 100 (a)	22.351
22. 100 (b)	22.352
22. 100 (c)	22.352 (c)(5)
22. 100 (d)	22.601
22. 100 (d)(1)-(d)(11)	22.150
22. 100 (e)	22.353
22. 101	22.355
22. 104 (a)(1), (a)(2) and (a)(4)	22.357
22. 104 (a)(3)	22.161
22. 104 (b)(1)	22.357 (a)
22. 104 (b)(2)	22.357 (b)(3)
22. 105	22.357
22. 106	22.359
22. 107	22.361
22. 108	22.363
22. 109	22.365
22. 110	22.367
22. 113	22.369
22. 115	22.159
22. 117 (a)	22.373 (a)-(d)
22. 117 (b) and (c)	22.165
22. 119	(REMOVED)
22. 120	22.377
22. 121	22.379
22. 200	22.301
22. 201	22.303
22. 205	22.305
22. 210	22.307
22. 212	(REMOVED)
22. 213	22.313
22. 302	22.315
22. 303	22.317
22. 304	(REMOVED)
22. 307	22.321
22. 308	22.323
22. 309	22.103
22. 400	22.401
22. 401	22.401
22. 402	22.409 (e)
22. 403	22.409
22. 404	22.403
22. 405	22.409 (c)
22. 406	22.409 (f)
22. 407	22.409 (h)
22. 500 (a)	22.7
22. 500 (b) and (c)	22.3 (b)
22. 501 (a)(1), (a)(4), (d), (h), (p)(1)	22.531
22. 501 (a)(2) and (a)(3)	(REMOVED)
22. 501 (a)(5)	22.411
22. 501 (b) and (i)(1)	22.561
22. 501 (c)	22.563
22. 501 (e), (f) and (m)	22.591
22. 501 (f)(1)	22.599
22. 501 (f)(1)(ii)	22.413
22. 501 (f)(2)	22.593
22. 501 (g)(1), (g)(2) and (k)(4)	22.621
22. 501 (g)(3) and (k)	22.625
22. 501 (i)(2)	22.565 (a)
22. 501 (i)(3)	(REMOVED)
22. 501 (j)	22.651
22. 501 (j)(1)	22.653
22. 501 (j)(2)	22.655
22. 501 (j)(3), (j)(4) and (j)(6)	22.657
22. 501 (j)(5), (j)(6) and (j)(7)	22.659
22. 501 (k)	22.623 (b)
22. 501 (k)(1) and (k)(3)	22.625 (b)(1)
22. 501 (k)(2)	22.627 (a)
22. 501 (k)(5)(i), (k)(5)(iii) and (k)(5)(iv)	22.627 (b)
22. 501 (k)(5)(ii)	22.625 (b)(2)
22. 501 (k)(6)	22.621 (c)
22. 501 (m)	22.603
22. 501 (m)(4)	22.150
22. 501 (p)(2)	(REMOVED)
22. 502	(REMOVED)
22. 503	(REMOVED)
22. 504 (a) (paging)	22.537 (c)
22. 504 (a) (two-way)	22.567 (c) and (e)
22. 504 (b)(1) (including charts)	(REMOVED)
22. 504 (b)(2)	22.537 (e) and (f)
22. 504 (c) (paging)	22.559
22. 504 (c) (two-way)	22.589
22. 505 (a) and (b) (paging)	22.535 (c)
22. 505 (a) (two-way)	22.565 (c)
22. 505 (c) (paging)	22.535 (d)
22. 505 (c) (two-way)	22.565 (d)
22. 505 (c)(1)	(REMOVED)
22. 505 (c)(2)	(REMOVED)
22. 505 (c)(3) (paging)	22.559 (b)
22. 505 (c)(3) (two-way)	22.589 (b)
22. 506 (a) (paging)	22.535 (b)
22. 506 (a) (two-way)	22.565 (b)
22. 506 (b)	22.565 (g)
22. 506 (c)	22.565 (f)

OLD RULE	NEW RULE
22. 506 (d) (power)	22.809 (a) and (b)
22. 506 (d) (idle tone)	22.811
22. 506 (e)	22.535 (b)
22. 506 (f) (paging)	22.535 (a)
22. 506 (f) (two-way)	22.565 (a)
22. 506 (f)(1) (paging)	22.535 (e)
22. 506 (f)(1) (two-way)	22.565 (e)
22. 506 (f)(2)	(REMOVED)
22. 506 (f)(3) (paging)	22.559 (b)
22. 506 (f)(3) (two-way)	22.589 (b)
22. 507	22.357(e)
22. 508 (a), (c) and (e)-(i)	(REMOVED)
22. 508 (b)	22.811
22. 508 (d)	22.357 (e)
22. 509 (a) and (b)	22.515
22. 509 (c)	22.577 (c)
22. 509 (d)	22.381
22. 509 (e)	22.579
22. 509 (f)	(REMOVED)
22. 514	22.571
22. 515	22.325
22. 516	(REMOVED)
22. 517	22.573
22. 518	22.575
22. 519	22.577
22. 521 (a)	22.805
22. 521 (b) (allotment table)	(REMOVED)
22. 521 (c) (power limits)	22.809
22. 521 (c) (idle tone)	22.811
22. 521 (d)	(REMOVED)
22. 522	(REMOVED)
22. 523	(REMOVED)
22. 524	22.381
22. 525 (a)	22.539 (c)
22. 525 (b)	22.539 (d)
22. 525 (c)	22.539 (e)
22. 525 (d)	(REMOVED)
22. 525 (e)	22.539 (b) and (f)
22. 525 (f)	22.539 (a)
22. 527	22.551
22. 600 (eligibility)	22.702
22. 600 (subscriber authorizations)	22.703
22. 601 (a)(1) and (b)	22.725
22. 601 (a)(2) and (c)	22.757
22. 601 (a)(4)	22.702
22. 601 (d) and (e)	(REMOVED)
22. 601 (f)	22.725 (b)
22. 601 (g)	22.729 and 22.725 (c)
22. 604	22.731
22. 605 (a),(b) and (d)-(g)	(REMOVED)
22. 605 (c)	22.357 (d)
22. 606	22.705
22. 607	22.733
22. 608	22.709 (a)
22. 609 (a)	22.709 (c)
22. 609 (b)	22.719 (c)
22. 609 (c)	22.709 (b)
22. 609 (d)	22.709 (d)
22. 609 (e)	22.711
22. 610	22.737
22. 900	22.900
22. 901 (a)	22.7
22. 901 (b), (c) and (d)	22.903
22. 902 (a) and (c)	22.905
22. 902 (b)	22.942
22. 902 (d)	22.907
22. 902 (e)	22.933
22. 903	22.911
22. 904	22.913 (a)
22. 905	22.913 (b)
22. 906 (a)(1)	22.917 (a)
22. 906 (a)(2)	22.915 (b)(1)
22. 906 (a)(3)	(REMOVED)
22. 906 (a)(4)	22.933
22. 906 (a)(5)	22.915 (a)
22. 906 (b)(1)	22.915 (b)(2)
22. 906 (b)(2)	22.915 (b)(3)
22. 906 (c)	22.915 (b)(4)
22. 906 (d)	22.915 (c)
22. 906 (e)	22.357
22. 906 (f)	22.357 (a)
22. 907 (a)	22.915 (d)
22. 907 (a)(1)	22.915 (d)(1)
22. 907 (a)(2)	22.915 (d)(2)
22. 907 (b)-(f)	22.917 (b)-(f)
22. 907 (g) and (h)	(REMOVED)
22. 907 (i)	22.917 (g)
22. 907 (j)	22.917 (h)
22. 908	22.373
22. 909	22.325
22. 910	22.313 (a)(1)
22. 911 (a), (b) and (c)	22.923
22. 911 (a)(1)	22.925
22. 911 (d)	22.901 (c)

OLD RULE	NEW RULE
22. 912	22.927
22. 913	(REMOVED)
22. 914 (a)	22.901 (e)
22. 914 (b)	22.901 (a) and (b)
22. 915	22.933
22. 916 (a) and (c)	(REMOVED)
22. 916 (b)(5)-(b)(8)	22.935 (f)
22. 917	22.937
22. 918 (a), (b) and (d)	(REMOVED)
22. 918 (c)	22.949
22. 919	(REMOVED)
22. 920 (a)	22.943 (c)
22. 920 (b)	22.943 (a)
22. 920 (c)	22.943 (b)
22. 921 (a) and (b)	(REMOVED)
22. 921 (c)	22.945 (c)
22. 921 (d)	22.945 (a)
22. 922	22.944
22. 923	(REMOVED)
22. 924 (a)	22.949 (a)(1) and (b)(1)
22. 924 (a)(1)-(a)(3)	22.951
22. 924 (b) and (c)	22.953
22. 925	22.947 (c)
22. 926 (applications)	22.953 (a)(5)(i)
22. 926 (system information update)	22.947 (c)(1)
22. 927	22.129
22. 928	22.129
22. 929	22.129 (c)
22. 930	22.901 (d)
22. 940	22.939
22. 941	22.940
22. 942	22.935
22. 943	22.936
22. 944	22.129
22. 945	22.129 (c)
22. 1000	22.1003
22. 1001	22.1007
22. 1001 (a), (b) and (c)	22.1007 (a), (b) and (c)
22. 1001 (d)(1)	22.1009 (a)
22. 1001 (d)(2)	22.1013 (c)(1)
22. 1001 (d)(3)	22.1013 (c)(2)
22. 1001 (d)(4)	22.1009 (b)
22. 1001 (d)(5)	22.1011
22. 1001 (d)(6)	22.1013 (b)
22. 1001 (d)(7)	22.1015
22. 1002	22.1013
22. 1003	22.357

OLD RULE	NEW RULE
22. 1004 (a)	(REMOVED)
22. 1004 (b)	22.357 (e)
22. 1004 (c)-(e)	(REMOVED)
22. 1005	22.1025
22. 1006	22.1031
22. 1008	22.1005
22. 1100	22.801
22. 1101	22.7
22. 1102	22.875
22. 1105	22.857
22. 1107 (a) and (b)	22.857 (a) and (b)
22. 1109	22.859
22. 1111	22.861
22. 1113	22.863
22. 1115	22.865
22. 1117	22.867
22. 1119	22.869
22. 1121	22.871
(NEW)	22.5
(NEW)	22.103
(NEW)	22.105 (g)
(NEW)	22.129
(NEW)	22.130
(NEW)	22.157
(NEW)	22.371
(NEW)	22.507
(NEW)	22.513
(NEW)	22.537
(NEW)	22.539
(NEW)	22.541
(NEW)	22.567
(NEW)	22.569
(NEW)	22.701
(NEW)	22.717
(NEW)	22.801
(NEW)	22.813
(NEW)	22.817
(NEW)	22.819
(NEW)	22.919
(NEW)	22.941
(NEW)	22.949
(NEW)	22.951
(NEW)	22.953
(NEW)	22.959
(NEW)	22.1001

APPENDIX D

List of Commenters

1. ALLTEL Mobile Communications, Inc.
2. Antenna Specialists Company
3. Applicants Against Lottery Abuses
4. Bell Atlantic Companies
5. BellSouth Corp. and BellSouth Enterprises, Inc.
6. Biby, Richard L., Communications Engineering Services, P.C.
7. C2+ Technology, Inc.
8. Cellular Telecommunications Industry Association
9. Centel Cellular Company
10. Claircom Communications Group, L.P.
11. Comp Comm, Inc.
12. duTreil, Lundin & Rackley, Inc.
13. Global Wulfsberg Systems (Sundstrand Corp.)
14. GTE Mobilenet, Inc.
15. Hatfield & Dawson, Consulting Engineers
16. International Mobile Machines
17. Joyce and Jacobs
18. McCaw Cellular Communications, Inc.
19. Metrocall of Delaware, Inc.
20. New Par
21. NYNEX Mobile Communications Company
22. Arthur K. Peters, Consulting Engineers
23. Pacific Bell and Nevada Bell
24. PacTel Cellular
25. PacTel Paging, et al.
26. Pac-West Telecomm, Inc. and PagePrompt U.S.A.
27. Page America Group, Inc.
28. Paging Network, Inc.
29. Petroleum Communications, Inc.
30. Radiophone, Inc.
31. RVC Services, Inc.
32. SkyTel Corporation
33. SMR Systems, Inc.
34. SNET Paging, Inc.
35. Southwestern Bell Mobile Systems
36. Telocator
37. U.S. Small Business Administration
38. United States Telephone Association
39. US West New Vector Group, Inc.
40. Vanguard Cellular Systems, Inc.

List of Reply Commenters

1. Ameritech Mobile Communications
2. Bell Atlantic Mobile Systems
3. Cellular Telecommunications Industry Association
4. Centel Cellular Company
5. Claircom Communications Group, L.P.
6. Comp Comm, Inc.
7. Dicomm Cellular, L.P.
8. Ericsson Corporation
9. Federal Communications Bar Association
10. GTE Services Corp.
11. Land Mobile Communications Council
12. McCaw Cellular Communications, Inc.
13. Motorola, Inc.
14. New Par
15. Pacific Bell and Nevada Bell
16. PacTel Cellular
17. PacTel Paging et al.
18. Pac-West Telecom
19. Paging Network, Inc.
20. SMR Systems, Inc.
21. Telocator

PUBLIC NOTICE

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FCC 94-204

August 4, 1994

MODIFICATION OF FCC COMPARATIVE PROCEEDINGS FREEZE POLICY

On February 25, 1994, the Commission issued a Public Notice[1] announcing a freeze on various aspects of the Commission's processes because of uncertainty concerning what action it would take in response to the United States Court of Appeals' holding in Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993). In Bechtel, the court reversed and remanded the Commission's decision in Anchor Broadcasting Limited Partnership, 7 FCC Rcd 4566(1992), modified, 8 FCC Rcd 1674 (1993), and concluded that the integration criteria that were applied to mutually exclusive applicants in that and other comparative proceedings were arbitrary and capricious.

The Commission has now determined that it will not appeal Bechtel. In light of that decision and in order to permit the continued authorization of broadcast services to the greatest extent possible consistent with Bechtel, we have decided to narrow the scope of the freeze order. Accordingly, effective on the date of this Public Notice, we will resume processing of applications for new AM, FM, and TV stations, applications for upgrades or major modifications of the facilities of such stations, and requests for rulemakings for FM and TV channel allotments. In this connection, we will resume the issuance of AM and TV cut-off lists and the opening of FM filing windows in the same manner as prior to the freeze. We will suspend processing only of those applications that are or become mutually exclusive with other applications. However, if all mutually exclusive applicants submit a settlement proposal, we will take whatever further steps may be appropriate to effectuate the settlement. All applicants should be aware that when processing is precluded because mutually exclusive applications are filed, all applications and application fees will be retained by the Commission until resolution of the issues raised in Bechtel permit the Commission to take further action.

(over)

[1] "FCC Freezes Comparative Proceedings," Public Notice FCC 94-41, February 25, 1994.

Window filing periods that were suspended by the February 25 freeze announcement will be reopened for a full 30-day period by future Public Notice and by publication in the Federal Register. New thirty day filing periods will also be published for previously announced filing windows commencing after the February 25 freeze order. Applications already filed during a suspended filing window will be considered filed in the reopened window.

We reiterate that hearing fee requirements have been suspended. Thus hearing fees due on any date after February 25 should not be submitted. Any party who has submitted a hearing fee due after February 25 may request a refund through the Office of Managing Director.

As an additional matter, we wish to clarify certain aspects of our original public notice. We reaffirm that during the freeze, the Commission, Review Board, and Administrative Law Judges will continue to issue decisions only in cases in which consideration of the applicants' comparative qualifications is unnecessary to resolve the case, and appeals will be entertained only of such decisions. Moreover, procedures involving the filing of pleadings and preparation of decisions involving analysis of applicants' comparative proposals will be held in abeyance. Accordingly, parties to pending comparative proceedings should not file or respond to motions to enlarge the issues, except in those proceedings in which consideration of the applicants' comparative qualifications is unnecessary to resolve the case.

Furthermore, proceedings will not be bifurcated to adjudicate the basic qualifications of some of the applicants, where their disqualification would leave unresolved comparative issues involving other applicants, even if those other applicants contemplate entering into a settlement. If, however, the parties actually file a request for approval of a settlement, which is contingent upon resolution of specified basic qualifying issues, such issues will be adjudicated. In this regard, we reaffirm that during the freeze, although we wish to encourage settlements, limitations on reimbursement and other current policies regarding settlements remain in place.

We also wish to address the impact of the freeze on the status of those orders that have not yet become final and that award construction permits in cases turning on comparative qualifications. Because such orders are subject to reconsideration under revised Commission policy, their effectiveness is stayed. Permittees pursuant to nonfinal orders who have not commenced construction should not do so. Other such permittees who have commenced construction are advised that further construction is at their own risk and that, in any event, they should not incur additional obligations directed toward construction or operation. Where program tests have already commenced, operations may be continued so as not to deprive the public of existing service. However, any application for license to cover a construction permit will be held in abeyance until the issues raised by the Bechtel remand are resolved.

Action by the Commission August 2, 1994. Chairman Hundt, Commissioners Quello, Barrett, Ness and Chong.

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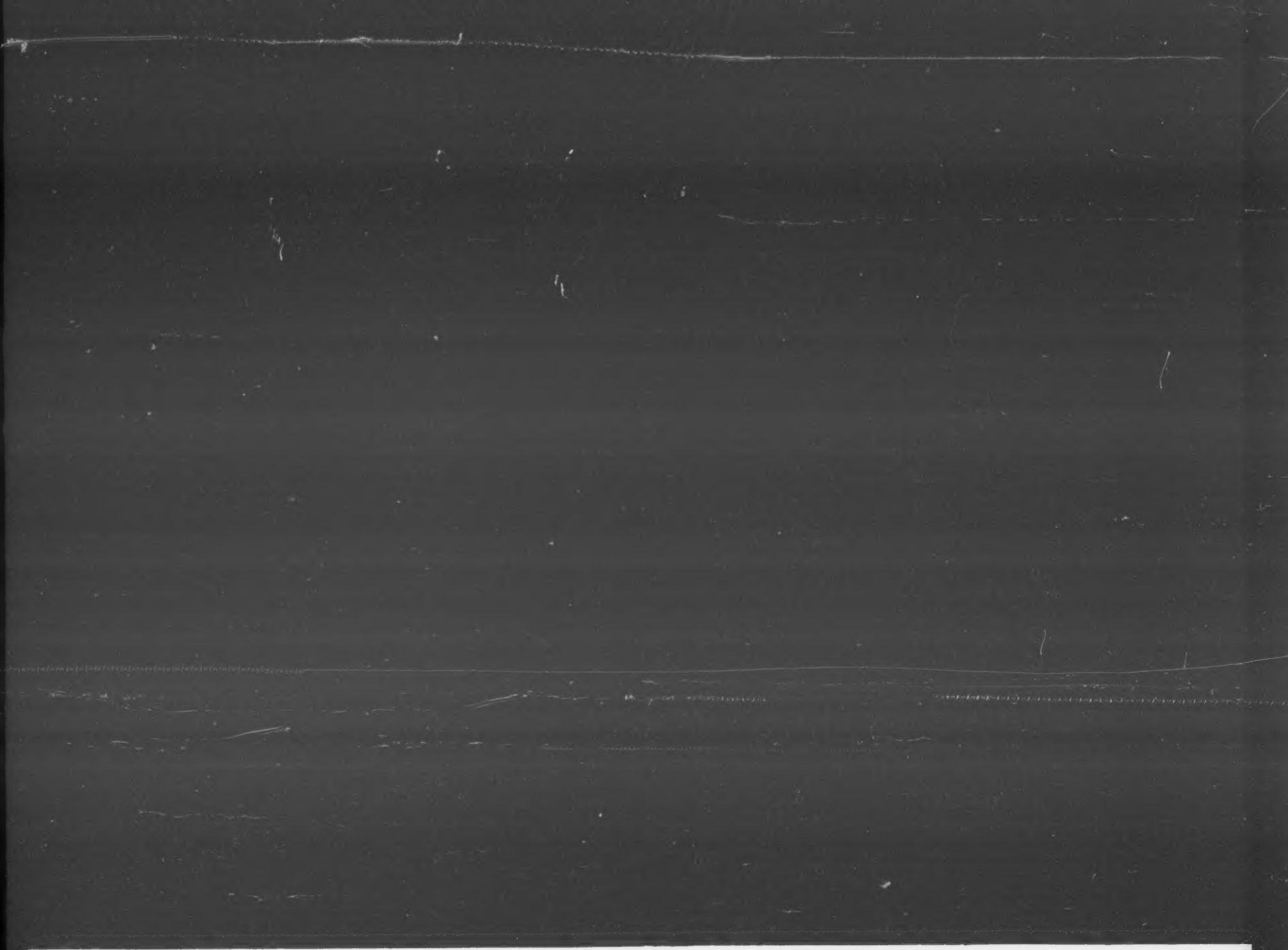
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